

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



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Meeting: 1310th meeting (March 2018) (DH)

Communication from Cyprus (07/03/2018) concerning the case of CYPRUS v. Turkey (Application No. 25781/94).

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Réunion : 1310^e réunion (mars 2018) (DH)

Communication de Chypre (07/03/2018) concernant l'affaire CHYPRE c. Turquie (requête n° 25781/94)
(anglais uniquement)

Informations mises à disposition en vertu de la Règle 8.2a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

CYPRUS v TURKEY (Application No. 25781/94)

MEMORANDUM BY THE GOVERNMENT OF CYPRUS

1310thCM(DH) MEETING - March 2018

PROPERTY RIGHTS OF ENCLAVED PERSONS
PAYMENT OF JUST SATISFACTION

INTRODUCTION

1. In its 2001 judgment on the inter-state case of *Cyprus v Turkey* (Application no. 25781/94) (“**the main judgment**”), the Court found a large number of continuing violations of the Convention rights. These included in particular (at §§269-270) violations of the property rights of Greek Cypriots living in the Karpas peninsula in the occupied areas of Cyprus (“**enclaved persons**”), as well as of their rights under other Articles of the Convention. A copy of §§269-270 of the judgment, together with the Court’s associated finding of violation, is annexed to this Memorandum for ease of reference (Annex 1).
2. In its subsequent judgment of 12 May 2014 (“**the just satisfaction judgment**”), the Grand Chamber of the Court declared that Article 41 applied insofar as both 1,456 missing persons and the enclaved persons were concerned. It unconditionally ordered that EUR 30 million be paid by Turkey in respect of non-pecuniary damage suffered by the relatives of the missing persons, who as the Court noted “*had endured decades of not knowing, which must have marked them profoundly*” (§56). It further unconditionally ordered that EUR 60 million be paid “*in respect of non-pecuniary damage suffered by the enclaved Greek Cypriot residents of the Karpas peninsula*”, stating that “*there is no doubt about the protracted feelings of helplessness, distress and anxiety of the Karpas residents whose rights under Articles 3, 8, 9, 10 and 13 of the Convention and Article 2 of Protocol No. 1 were found in the principal judgment to have been violated*” (§57).
3. Those sums were ordered:
 - a. to be paid in their entirety within three months (i.e. by 12 August 2014), , and
 - b. to be distributed by the Government of Cyprus to the individual victims.

4. The Government of Cyprus notes with concern that:

- a. Turkey has failed to pay the EUR 90 million ordered in favour of the individual victims of its conduct in the just satisfaction judgment, or to offer any explanation why it has not done so, , more than 3.5 years after those sums fell due.
- b. No full or satisfactory explanations have been provided by Turkey in relation to the evidence previously advanced by the Government of Cyprus of continuing violation of the property rights of enclaved persons – issues which overlap to a considerable extent with the issues regarding the property rights of displaced persons.

JUST SATISFACTION

5. The just satisfaction judgment was described in the concurring opinion of Judge Pinto de Albuquerque, joined by Judge Vučinić, as “*the most important contribution to peace in Europe in the history of the European Court of Human Rights*”. Those Judges expressed the logic of the judgment of the Grand Chamber of the Court in the following words (§1):

“The message to member States of the Council of Europe is clear: those member States that wage war, invade or support foreign armed intervention in other member States must pay for their unlawful actions and the consequences of their actions, and the victims, their families and the States of which they are nationals have a vested and enforceable right to be duly and fully compensated by the responsible warring State. War and its tragic consequences are no longer tolerable in Europe and member States that do not comply with this principle must be made judicially accountable for their actions, without prejudice to additional political consequences.”

6. That passage demonstrates not only the exceptional significance of the Court’s judgment, but also the gravity of Turkey’s failure to respond in any way to the binding obligation placed on it by the Court.

7. The Grand Chamber emphasised that “*if just satisfaction is ordered in an inter-State case, it should always be done for the benefit of individual victims*” (§46, emphasis added). The Government of Cyprus is fully committed to ensuring that individual victims will be the sole beneficiaries of the just satisfaction once it has been paid. The supervision of the Committee of Ministers, referred to in the just satisfaction judgment, provides any additional reassurance that could reasonably be required.
8. Turkey’s continued failure to pay the just satisfaction that has been ordered, several years after it fell due, demonstrates its disregard for the individual victims that the money was intended to compensate. The more time that goes by, the older those uncompensated victims become, and the less benefit they will be able to derive from such compensation as may eventually be paid.
9. More profound still are the consequences of Turkey’s failure for the core mission of the Court and of the Convention system. By failing to comply with a judgment of such exceptional significance as is the just satisfaction judgment, Turkey threatens the effectiveness of the Convention system as a promoter of peace and a guardian of democracy and the rule of law.
10. The Government of Cyprus dares to hope that in its own memorandum, Turkey will:
 - a. explain why it has failed to comply with the Court’s order to date (though self-evidently, no explanation could constitute an excuse); and
 - b. commit to the immediate payment, with interest, of the just satisfaction that has been ordered in favour of the victims of the violations of the Convention that the Court has attributed to Turkey.
11. In the event that payment is not made immediately, the situation will be not only unsatisfactory, but dismaying. Turkey’s breach of its clear obligations will need to be deprecated in the strongest terms, and the Government of Cyprus calls upon the Committee of Ministers to do so.

PROPERTY RIGHTS OF THE ENCLAVED PERSONS

Categories of potential victims

12. As may be seen from §§269-270 of the main judgment, violations of the property rights of the enclaved persons were found in two specific respects:

- a. a continuing violation of Article 1 of Protocol No. 1 in respect of *Greek Cypriots living in the occupied areas of Cyprus*, in that their right to the peaceful enjoyment of their possessions was not secured *in case of their permanent departure from that territory* (§269); and
- b. the non-recognition of *inheritance rights of persons not living in the occupied areas of Cyprus* in connection with the property in the occupied areas of deceased Greek-Cypriot relatives (§270).

13. The violations identified by the Court (which are distinct from those that were intended to be compensated by the just satisfaction ordered in 2014)¹ are therefore by no means limited in principle to the damage suffered by the few hundred remaining enclaved persons.² Damage is also liable to be suffered, in particular, by:

- a. those residents who have left the Karpas peninsula since 1974, and who own property in the occupied areas of Cyprus; and
- b. the heirs not living in the occupied areas of deceased Greek Cypriot enclaved persons with property in the occupied areas.

The number of enclaved persons after the invasion of 1974 was some 20,000.³ Evidently, therefore, the number of persons falling into the categories identified by the Court at §§269-270 of the main judgment remains very large indeed.

¹ Just satisfaction judgment, §§51, 57.

² In its application for just satisfaction (June 2012, §44) the Government of the Republic of Cyprus estimated the number of such persons as 360.

³ See the Government of the Republic of Cyprus's application for just satisfaction (June 2012), para. 44.

Overlap with displaced persons

14. As appears from the above, most of the potential victims of the violations identified in the main judgment are currently not resident in the occupied areas of Cyprus. Those violations relate to the difficulties of:

- a. the owners of property in the occupied areas of Cyprus who have permanently departed from those areas; and
- b. the heirs not living in the occupied areas of deceased Greek Cypriot enclaved persons with property in the occupied areas.

15. Whilst special and additional problems arise concerning the enclaved and their heirs, the overlap is, self-evidently, considerable. The property rights of the displaced persons can accordingly not be dissociated from the property rights of the enclaved and their heirs. Such an approach would introduce an artificial and unwarranted division and differentiation between the two categories of individuals. The immovable property situated in the areas under Turkey's effective control is equally affected by the violations, irrespective of the status of the lawful owner of the property, whether displaced, or enclaved, or heir of the enclaved.

16. This point was highlighted in §266 of the Court's main judgment, as follows:

*"However, the Commission did find it established that Greek Cypriots who decided to resettle in the south were no longer considered legal owners of the property which they left behind. **Their situation was accordingly analogous to that of displaced persons** (see paragraph 187 above) and, as with the latter, there were no remedies available to them to contest this state of affairs."* (emphasis added).

Since those who settled in the non-occupied areas (main judgment §269) have been acknowledged by the Court to be in an analogous position to those who were forcibly displaced, the same must be true of heirs not living in the occupied areas (main judgment §270) and - *a fortiori* - of those who are confined to enclaves in the occupied areas.

17. Further, in this context, it is noted that the Secretariat – while underlining that the property rights of enclaved persons involve certain problems specific to that group – expressed the view in 2014 that the property rights of the enclaved could “*be re-examined in the light of the Committee’s conclusions on the property rights of displaced persons*”.⁴

Procedural history

18. The history of this matter in the Committee of Ministers has been one of:

- a. evidence from the Republic of Cyprus that the violations identified in §§269-270 of the main judgment have continued;⁵
- b. counter-submissions and assertions by Turkey;⁶
- c. syntheses prepared for the Committee;⁷ and
- d. repeated decisions by the Committee to defer consideration of the substantive issues to future meetings, most recently in September 2015 (1236th meeting), December 2015 (1243rd meeting), September 2016 (1265th meeting) and June 2017 (1288th meeting).

⁴ Stock-Taking Memorandum of 25 November 2014 (H/Exec(2014)8) §§29, 31.

⁵ See, e.g., its Memorandum of March 2012, supported by information about 15 cases of confiscation by the Turkish occupying authorities of houses and other immovable property situated in the occupied areas and owned by enclaved Greek Cypriots or their heirs (CM/Inf/DH(2012)37); the Memorandum of September 2012 (DH-DD(2012)905), the Memorandum of November 2012 (DH-DD(2012)1107), the Memorandum of May 2013 (DH-DD(2013)617), the Memorandum of May 2014, with updated affidavit evidence from three of the cases first raised in March 2012 (DH-DD(2014)697), the Memorandum of November 2014 (DH-DD(2014)1414) and the questions provided to the Committee in October 2015 (DH-DD(2015)1115).

⁶ Notably, its claims in relation to the applicable law in Memoranda of October 2012 (DH-DD(2012)997) and December 2012 (DH-DD(2012)1136, its letter of February 2013 enclosing an “Information Booklet” prepared by the “TRNC authorities” (DH-DD(2013)222), further communications of February and April 2013 (DH-DD(2013)220, DH-DD(2013)426 and DH-DD(2013)530), and its Memoranda of April and May 2014 (DH-DD(2014)457 and DH-DD(2014)722).

⁷ See, in particular, two documents prepared by the Department for the Execution of the judgments and decisions of the Court: the Information document of 13 May 2013, (CM/Inf/DH(2013)23), with its ambivalent conclusion that “*All the measures taken by the Respondent State seem capable of remedying the violations found by the Court*” ... but that “*It will clearly be a matter of the practice of the competent authorities, the courts and the Immovable Property Commission to guarantee the effectiveness of the measures taken*”, and the Stock-Taking Memorandum of 25 November 2014 (H/Exec(2014)8).

19. The Republic of Cyprus does not criticise the Committee for these repeated deferrals, which were explained in part by the need to consider the impact of the just satisfaction judgment. Their effect is however that the Committee lacks up-to-date evidence in relation both to the legal status of the measures taken by Turkey, and to what the 2013 Information Document referred to as “*the practice of the competent authorities, the courts and the Immovable Property Commission to guarantee the effectiveness of the measures taken*”. Nor have answers been provided by Turkey to the questions regarding treatment of the enclaved persons which the Republic of Cyprus provided to the Committee in October 2015 ([DH-DD\(2015\)1115](#))⁸.

Outstanding evaluations

20. Turkey’s protestations that its violations have been remedied cannot be properly assessed (as acknowledged in the 2013 Information Document) without taking into account the prevailing situation on the ground, and, in particular, the adverse conditions which, in the view of the Republic of Cyprus, render the remedies provided theoretical and illusory. The Committee is therefore invited to undertake a thorough analysis of the actual impact *of the mechanisms, procedures and remedies relied on by Turkey, and to ensure that there are indeed in place practical, effective and accessible remedies.*

21. That point is exemplified by the three affidavits submitted to the Committee in May 2014, setting out the practical impediments faced by heirs of the enclaved in their attempt to make use of the remedies purported to be provided by Turkey, and referred to in paragraphs 10 - 16 of the memorandum of the Republic of Cyprus concerning the 1201st CM(DH) meeting of June 2014 ([DH-DD\(2014\)697](#))⁹. The said memorandum and affidavits have not yet been discussed by the Committee, in accordance with its previous decisions¹⁰.

22. The impediments referred to in those affidavits remain in place. Where the enclaved persons themselves are concerned, it is difficult for the authorities of the Republic of Cyprus even to obtain further information from the members of this highly vulnerable

⁸ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c230c

⁹ <https://wcd.coe.int/ViewDoc.jsp?p=&Ref=DH-DD%282014%29697&Language=lanEnglish&Site=CM&direct=true>

¹⁰ Decisions of 1201st meeting (5 June 2014) and 1236th meeting (25 September 2015).

group, who live under conditions of high surveillance in the occupied areas, and who fear retaliation and persecution if they complain. A very recent example of the treatment and adverse conditions suffered by this group in the occupied areas, is the obstruction, as of the 1st of October 2017, of the long standing (of more than 40 years) regular supply by the Republic of Cyprus to the enclaved, through the United Nations Peacekeeping Force in Cyprus (UNFICYP), of humanitarian aid (food, medical and other supplies), as a result of the unilateral decision of the authorities in the occupied areas to impose “taxes and fees” on such humanitarian aid and assistance.

23. Such difficulties enhance the need for Turkey to be held to account in relation not only to the content of its laws but to their practical application.

Suggested course

24. The Committee is accordingly invited to call upon Turkey, within a period of time specified by the Committee:

- a. to provide updated information with regard to the relevant ‘legislation’ relied upon by Turkey as remedying its violations, and the hotline, together with statistics indicating the number of times that it has been used by victims of those violations and the outcomes of such use; and
- b. to provide full details of its alleged compliance, supported by affidavit evidence from persons affected, to include, in particular:
 - i. the practical steps which enclaved persons who have permanently departed the occupied areas of Cyprus have had to take in order to ensure the peaceful enjoyment of their property, the cost to them of doing so and the number of properties in the occupied areas which are used without restriction by formerly enclaved persons; and
 - ii. the number of heirs of enclaved persons living in the non-occupied areas of Cyprus who have inherited the property in the occupied areas of their deceased Greek Cypriot relatives, the practical steps required and the cost incurred by them in doing so.

- c. to provide answers to the questions regarding treatment of the enclaved persons which the Republic of Cyprus provided to the Committee in October 2015 (DH-DD(2015)1115).

25. In view of the substantial overlap between these issues and those relating to the displaced persons (above), it is submitted that the logical and procedurally efficient course is for consideration of the property rights of enclaved persons to be considered at the 1324th (Human Rights) meeting of the Ministers' Deputies, from 18th to 20th September 2018, at which it has already been determined that the property rights of the displaced persons are to be considered. That course would enable decisions to be taken against the background of the entirety of the relevant factual position.

26. So that there is time for the Committee to consider the evidence of Turkey and for the Republic of Cyprus if necessary to respond to it, the Committee is invited to specify that Turkey should provide the information and evidence referred to above not later than 1 June 2018.

CONCLUSION

27. For the reasons set out above, the Government of Cyprus requests the Deputies, if there has been no improvement in the position by the time of their 1310th meeting:

In relation to just satisfaction

- a. to underline the vital importance of the unconditional obligation to pay the just satisfaction awarded by the Court in 2014;**
- b. to express their dismay at the continued failure of Turkey to comply with that obligation; and**
- c. to exhort the Turkish authorities to pay immediately the just satisfaction and interest that have been ordered, for the benefit of the individual victims of the violations that the Court has found.**

In relation to the property rights of enclaved persons

- d. to call upon Turkey to provide the information and details specified at paragraph 26 above, not later than 1 June 2018; and**
- e. to decide to resume consideration of the issue at the 1324th (Human Rights) meeting of the Ministers' Deputies, from 18th to 20th September 2018, at which it has already been determined that the property rights of the displaced persons are to be considered.**

ANNEX 1

Extracts from *Cyprus v Turkey* no. 25781/94, main Grand Chamber judgment of 10 May 2001

Paragraphs 269 and 270

269. The Court notes from the facts established by the Commission that, as regards ownership of property in the north, the “TRNC” practice is not to make any distinction between displaced Greek-Cypriot owners and Karpas Greek-Cypriot owners who leave the “TRNC” permanently, with the result that the latter's immovable property is deemed to be “abandoned” and liable to reallocation to third parties in the “TRNC”.

For the Court, these facts disclose a continuing violation of Article 1 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory.

270. The Court further observes that the evidence taken in respect of this complaint also strongly suggests that the property of Greek Cypriots in the north cannot be bequeathed by them on death and that it passes to the authorities as “abandoned” property. It notes that the respondent Government contended before the Commission that a court remedy could be invoked by an heir in order to assert inheritance rights to the property of a deceased Greek-Cypriot relative. The Court, like the Commission, is not persuaded that legal proceedings would hold out any prospects of success, having regard to the respondent Government's view in the proceedings before the Commission that the property of deceased Greek Cypriots devolves on the authorities in accordance with the notion of “abandoned” property. It further notes that heirs living in the south would in fact be prevented from having physical access to any property which they inherited.

Accordingly, Article 1 of Protocol No. 1 has also been breached in this respect, given that the inheritance rights of persons living in southern Cyprus in connection with the property in northern Cyprus of deceased Greek-Cypriot relatives were not recognised.

Operative part

IV ALLEGED VIOLATIONS ARISING OUT OF THE LIVING CONDITIONS OF
GREEK CYPRIOTS IN NORTHERN CYPRUS

...

9. HOLDS by sixteen votes to one that there has been a continuing violation of Article 1 of Protocol No. 1 in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory and in that, in case of death, inheritance rights of relatives living in southern Cyprus were not recognised (paragraphs 269-70).