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

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

Information made available under Rule 8.2a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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

Communication de la Turquie (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.

MEMORANDUM

“Property rights of Karpaz residents who permanently leave Karpaz and the inheritance rights of heirs residing in South Cyprus” cluster of “Cyprus v. Turkey”

1310th (Human Rights) meeting of the Minister’s Deputies (CMDH)

13-15 March 2018

Introduction

Property rights of Karpaz residents who permanently leave the area and the inheritance rights of the heirs of deceased Karpaz residents who reside in South Cyprus are the two very specific issues in the “Cyprus v. Turkey” judgment that are on the agenda of the next Committee of Ministers meeting in human rights format (CMDH) that will take place on 13-15 March 2018.

With a view to conducting a focused debate, we request the Deputies to

- recall that the necessary measures in respect of these issues have already been taken and are being effectively implemented, and
- acknowledge that the just satisfaction judgment does not have any impact on these very specific issues which were expressly excluded from the just satisfaction application by the applicant.

Case description

In May 2001, the European Court of Human Rights (ECtHR) found a number of violations based on facts primarily established in the opinion the Commission drew up and adopted on 4 June 1999 in the “Cyprus v. Turkey” case.¹

Given the broad scope of the judgment, the CMDH has been examining, closing and moving onto other specific aspects of the judgment.

Three very specific findings of the European Court of Human Rights relating to the living conditions of the Greek Cypriots in the Karpaz region will be on the agenda of the upcoming CMDH meeting. These are:

- Article 1 of Protocol No. 1 in respect of Greek Cypriots living in North Cyprus as “their right to peaceful enjoyment of their possessions was not secured in case of their permanent departure from the territory.”² The reason for this finding was the TRNC practice at that time (in 1999 when the Commission drew its report) did not make any distinction between displaced Greek Cypriots and Karpaz Greek Cypriots who left North Cyprus permanently as their properties were deemed abandoned.
- Article 1 of Protocol No. 1 in respect of Greek Cypriot heirs living in South Cyprus as their inheritance rights in connection with the property in North Cyprus of deceased Greek

¹ Cyprus v. Turkey [GC], no. 25781/94, §4, ECHR 2001-IV.

² Cyprus v. Turkey [GC], no. 25781/94, §269, ECHR 2001-IV.

Cypriot relatives were not recognized back in 1999.³ The Court said the property could not be bequeathed by such heirs, the legal proceedings would not hold any prospect of success if invoked by them, and further noted that the heirs would not have physical access to such properties.

- Article 13 due to the lack of remedies that would enable Greek Cypriots to complain, under Article 1 of Protocol No. 1.⁴ The Court did not find a violation of Article 13 in respect of interferences by private persons with the rights of Greek Cypriots living in northern Cyprus under Article 8 of the Convention and Article 1 of Protocol No. 1.

Legislation remedying the violations

Following the Court's judgment in 2001, the Turkish Cypriot authorities enacted specific legislation that remedy the findings of the Court regarding property rights of Karpaz residents who permanently leave Karpaz and the inheritance rights of heirs residing in South Cyprus of deceased Karpaz residents.

A. Property rights of persons leaving North Cyprus permanently (§269 of the principal judgment)

On 27 February 2008, the Council of Ministers of the Turkish Republic of Northern Cyprus (TRNC) issued a Decision numbered 518-2008.⁵ This decision ensures that the Greek Cypriot residents of Karpaz can continue to exercise their property rights even in the event of permanent departure by maintaining minimum contacts with North Cyprus (for example, have a bank account or be a member of a local association).⁶

In case the resident opts not to maintain any contacts, s/he has the option to transfer the property to a person of his/her choice within one year of permanent departure according to the same Decision. If the Karpaz resident does not exercise the option to transfer the property within one year of ceasing all contacts with the North, the Immovable Property Commission provides them a remedy as a last resort.⁷

Maintaining minimum contacts is inserted in the Council of Ministers Decision to ensure Karpaz area, which is located at the far tip of the island, does not become depopulated. Therefore, should

³ Cyprus v. Turkey [GC], no. 25781/94, §270.

⁴ § 324.

⁵ The text of the decision is the annex to document CM/Inf/DH(2012)37.

⁶ Section 3 of Law No. 41/77 (Housing Law) entrusts the TRNC Council of Ministers with the power to define the term "foreigner". The TRNC Council of Ministers clearly defined permanent residence in Article (b) of the Decision by giving examples of acts to determine whether "permanent residence" has been moved to the area controlled by the Greek Cypriot Administration for the purposes of the Decision. The TRNC Council of Ministers proceeded to exclude from the term "foreigner" those who move their permanent residence to the area controlled by Greek Cypriots and either transfer their property within 1 year from the departure date or who maintain minimum contacts with the property and the region.

⁷ The Immovable Property Commission (IPC) which was set up under TRNC Law No. 67/2005 entered into force on 22 December 2005. This Law enables Greek Cypriots to apply to the Immovable Property Commission for restitution, compensation and/or exchange, as well as compensation for loss of use as a complementary remedy to the three primary remedies, for the immovable properties that were registered in their name on 20 July 1974 (or if they are the legal heirs to such persons) or their movable properties before 13 February 1975, which they had to abandon due to conditions beyond their own volition.

property owners in the region, who are predominantly Greek Cypriot, decide not to maintain minimum contacts with the property and the region, they are asked to transfer the immovable property to another person within one year of their permanent departure. Otherwise, property would be deemed abandoned but the Greek Cypriots can seek redress before the Immoveable Property Commission.

The decisions of the Immoveable Property Commission as well as those of the administration in this respect can be challenged before the Supreme Court exercising revisional jurisdiction (Supreme Administrative Court).

B. Property rights of heirs of deceased Karpaz residents (§270 of the principal judgment)

Inheritance rights of Greek Cypriots residing in the South over properties left behind by deceased Greek Cypriots in Karpaz are recognized according to the Council of Ministers Decision of 518-2008.⁸ The heirs are entitled to set up administration of estates in accordance with the Administration of Estates Law (Cap. 189) as any other TRNC citizen. Once these proceedings are completed, the property will be registered in the name of heirs who will be able to enjoy the properties in question under the same terms as Greek Cypriot residents of Karpaz.

Greek Cypriots benefiting from the new legislation

Greek Cypriots who have applied to the competent authorities after the entry into force of the Decision have been benefiting from the new remedies.

It turns out that it is mostly the heirs of Karpaz residents who have been taking advantage of these remedies. The heirs have been setting up administration of estates in the TRNC, and as part of administration, the properties belonging to deceased owners devolve onto the heirs, including those resident in the South.⁹ In other words, since the passage of the said Decision, the Famagusta District Land Registry has been issuing title deeds in the names of Greek Cypriot heirs of deceased Karpaz residents.¹⁰ By way of update, between 9 February 2015 and 11 January 2018, 24 new administration of estates have been set up by the heirs of Greek Cypriot Karpaz residents, some of whom resided in the South.

In addition, so far, 14 applications filed by the heirs of Karpaz residents had been concluded by the Immoveable Property Commission. These were the heirs of Karpaz residents who passed away before the entry into force of the 2008 Decision.

In order to encourage the Greek Cypriots concerned to make full use of the effective domestic remedies, the TRNC Ministry of Interior and Local Administrations prepared and distributed an Information Booklet concerning the Property Rights of Greek Cypriot Residents of Karpaz and their Heirs in May 2013.¹¹ Also, a telephone hotline has been set up in order to address the inquiries of the beneficiaries in a swift and effective manner.¹²

⁸ The text of the decision is the annex to document CM/Inf/DH(2012)37.

⁹ See DH-DD(2014)457.

¹⁰ See DH-DH(2014)722, p. 7.

¹¹ Annex to the Memorandum, DH-DD(2014)722.

¹² See DH-DH(2014)722, p. 7.

The Greek Cypriots consulted welcomed these positive steps and opined that the Information Booklet provided them with extremely useful information and helped them to better understand their rights on a practical level which they were already asserting through their lawyers.

In its assessment, the Secretariat said that “the examination of the booklet shows us that it contains practical information which is sufficiently clear and detailed to allow the interested persons to use the options which are provided to them, in particular according to the decision of the Council of Ministers of 2008”.¹³

Status of the process before the CMDH

The legislation enacted as well as its implementation have been under scrutiny in the CMDH for 10 years now. Throughout these years, the applicant took the lead in questioning the legislation, including its legal validity, clarity and foreseeability, the justification put forth for the minimum contacts requirement and whether it was discriminatory. The applicant also produced so-called “evidence” to cast doubt on implementation,¹⁴ and made repeated references to the “context” with an effort to confuse the specific issues under examination with the remaining findings of the Court in relation to the area as if they remained static.

The position of the Turkish side had been previously explained and the allegations responded many times.¹⁵

The respective positions were also analyzed by the Secretariat.

The Secretariat prepared its first assessment on the legislation adopted as early as on 10 September 2009.¹⁶

This was followed by a second assessment in the form of a synthesis.¹⁷ In this synthesis, the Secretariat confirmed, *inter alia*, that the alleged complainants did not either make any démarche to assert their rights with the competent Turkish Cypriot authorities or the few démarches indicated did not appear to have any link with the procedures under the new legislation presented.

Subsequently, on 13 May 2013, the Secretariat prepared another comprehensive Memorandum where it summarized the information submitted by the Turkish side and the applicant, provided a synthesis of information and an updated assessment of the measures taken by the Turkish side since the Secretariat’s initial assessment and analyzed the additional questions raised by the Delegations and the answers provided by the Turkish side.¹⁸ The Secretariat concluded this assessment as follows:

¹³ CM/Inf/DH(2013)23, para. 39.

¹⁴ See, for example, the Memoranda of the Turkish side in response, DH-DD(2012)997, DH-DD(2014)722.

¹⁵ See, for example, DH-DD(2012)523; DH-DD(2012)997 (dated 24 October 2012); DH-DD(2012)1136; DH-DD(2012)1147; DH-DD(2014) 457 (dated 4 April 2014); DH-DD(2014)722 (dated 30 May 2014).

¹⁶ CM/Inf/DH(2009)39.

¹⁷ CM/Inf/DH(2012)37, dated 27 November 2012, “Synthesis of information submitted by the Cypriot and Turkish authorities respectively in March and May 2012 and subsequently on 4 and 24 October 2012 – concerning the confiscation of property belonging to enclaved Greek-Cypriots or their heirs”.

¹⁸ CM/Inf/DH(2013)23 (dated 13 May 2013).

"47. All the measures taken by the Respondent State seem capable of remedying the violations found by the Court in relation to the property rights of Greek Cypriots leaving the north of Cyprus permanently and of heirs of Greek Cypriots residing in the north of Cyprus."¹⁹

Latest CMDH decision

The CMDH decided to resume the consideration of the matter in its June 2014 meeting, in light of the responses submitted by the Turkish side to the additional questions interested Delegations might raise. Given the fact that the Delegations already raised all the relevant questions previously which the Turkish side answered leading to the positive assessment of the Secretariat, no other Delegation but the applicant asked further questions. In the absence of any new question, the Turkish side referred the applicant to its previous answers.²⁰

The last time CMDH had an extensive debate on this cluster was back in September 2015. In the decision adopted, the Deputies

"1. Expressed their appreciation of the measures taken as regards the property rights of enclaved Greek Cypriots and their heirs..."²¹

In other words, the CMDH decided that the Turkish side has taken the measures remedying the specific findings of the European Court of Human Rights.

Context

So far, CMDH examined and proceed to close its examination in relation to, *inter alia*, the freedom of religion, the censorship of schoolbooks and the absence of secondary education (violations of Articles 9, 10 and 2 of Protocol No.1)²² which were findings under the heading of the living conditions of the Greek Cypriots in the Karpaz area in North Cyprus.

The remaining findings of the Court under the same heading have not been examined. Having said that, this does not mean that the situation remained static since 1999. The findings of the Court in relation to the "discrimination suffered by the Greek Cypriots living in North Cyprus under Article 3 and the breach of their private and family life under Article 8" primarily stemmed from the restriction on freedom of movement that were in place at the time of the Commission report of 1999. This is no longer the case. Since April 2003, crossing points opened between North and South Cyprus enabling people to freely cross from the North to the South and vice versa. Also, the other considerations related to the absence of secondary school facilities and insufficient number of priests, which led the Court to find violations under these Articles have already been remedied, leading to the closure of their examination by the CMDH as mentioned above. The other elements such as impossibility to preserve property upon departure and the inability of Karpaz residents to bequeath to a relative were considered relevant under Articles 3 and 8. These are elements that have been remedied and will be examined in the upcoming March meeting.

¹⁹ CM/Inf/DH(2013)23 (dated 13 May 2013).

²⁰ DH-DD (2014)457 (dated 8 April 2014).

²¹ 1236th meeting, 22-24 September 2014.

²² CM/Inf/DH(2011)32.

The just satisfaction application and the judgment of 12 May 2014

The just satisfaction application to the Court in the “Cyprus v. Turkey” judgment did not include the property rights of Karpaz residents or their heirs. This is because after the initial application for just satisfaction concerning missing persons on 11 March 2010, the applicant asked for a declaratory judgment from the Court with respect to displaced persons on 25 November 2011. The applicant then amended its initial claims and raised new just satisfaction claims in respect of Articles 3, 8, 9, 10 and 13 of the Convention and Article 2 of Protocol No. 1 of the Greek Cypriot residents of the Karpas peninsula²³ on 21 June 2012. In other words, the applicant not only failed to refer to Article 1 of Protocol No. 1 and §§ 269-270 of the principal judgment (under examination in March)²⁴, but expressly excluded them from the application. In footnote 45 of the application, the applicant wrote:

“In addition to these Articles the Court found a violation of Article 1 of Protocol 1 which is not the subject of the present application for just satisfaction. See Judgment, §§269-270 where the Court found violations of property rights in respect of the deemed abandonment of property of Karpas residents who departed the region and a failure to recognise inheritance rights of those living in the southern part of Cyprus.” (emphasis added)

In turn, the just satisfaction judgment of May 2014 included a ruling on the payment of just satisfaction for the violations found in 2001 with respect to the “living conditions of the Karpaz residents”. The property rights of Karpaz residents or their heirs were not included in this ruling.

Also, in paragraph 63 of the just satisfaction judgment, the Court opined whether compliance with the Court’s finding on displaced persons (Part III, point 4 of the operative provisions of the principal judgment)²⁵ could be consistent with “unlawful sale or development” of properties.²⁶ In other words, the Court’s views were about displaced persons, and not Karpaz residents and their heirs.

At the same time, in paragraph 63, when the Court was referring to the *Demopoulos and Others*, decision, it was again talking about the question of compliance with the *property rights of displaced persons* (Part III of the operative provisions of the principal judgment).

In other words, neither the just satisfaction payment nor the Court’s comments about compliance were related to property rights of Karpaz residents or their heirs.

No impact of the just satisfaction judgment on the cluster of Karpaz residents and their heirs

In September 2015, CMDH wished to examine the possible consequences the just satisfaction judgment of 12 May 2014 might have on this cluster.

²³ Part IV, points 4, 6, 11, 12, 15 and 19 of the operative provisions of the principal judgment and the corresponding paragraphs to which they refer.

²⁴ Part IV, point 9.

²⁵ “Section III(4) *Holds* by sixteen votes to one 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 (paragraph 189)”

²⁶ “*Cyprus v. Turkey*” (just satisfaction), §63.

The position of the Turkish side has been that the just satisfaction judgment of 12 May 2014 does not have any impact on the two very narrow issues which are before the CMDH.²⁷

First of all, as it can be seen above, the cluster of Karpaz residents and their heirs relates to very specific questions which are very different from that of property rights of displaced persons. The same treatment of the two clusters was the reason for the violation in "Cyprus v. Turkey". In the principal judgment, when the Court said that the situation of Karpaz residents are analogous to that of displaced persons, it found a violation because the two are treated in a similar manner. This is the reason why subsequently in North Cyprus a different but complementary legal regime has been introduced for Greek Cypriot Karpaz residents and their heirs than the one that applies to displaced persons through the 2008 Council of Ministers Decision. Accordingly, the Turkish Cypriot side had taken the necessary measures to ensure the Greek Cypriot Karpaz residents keep their properties even in the cases of departure from the North, so long as they maintain minimum contacts, and recognise the property rights of their heirs.

Secondly, as underlined above, the just satisfaction application to the Court specifically excluded the cluster concerning property rights of Karpaz residents or their heirs.²⁸ Furthermore, the applicant's request for a declaratory judgment related exclusively to the issue of the property rights of displaced persons. Moreover, the Court's reply in the just satisfaction judgment referred to the cluster on displaced persons only. Thus, in paragraph 63 of the judgment on just satisfaction, where the Court opined as to what compliance with the conclusions of the principal judgment would entail, it referred twice to Section III of the operative provisions of the principal judgment which related exclusively to the property rights of displaced persons.

Immovable Property Commission provides a remedy to Karpaz residents and their heirs as a last resort if and when they do not benefit from the 2008 Decision. Clearly, the Court in the just satisfaction judgment could not comment on the effectiveness of the Immovable Property Commission with respect to Karpaz residents and their heirs as the Court was not seized for this purpose and therefore, the Court's comments on compliance related exclusively to displaced persons.

This is also the reason why when the Court's comments in the just satisfaction on what compliance with the principal judgment entail was discussed last December, the CMDH decided to examine the implementation of the existing avenues in addressing possible "unlawful sale or exploitation" of properties for *displaced persons only*.

In its analysis of the impact of the just satisfaction judgment on the issues concerning the property rights of Karpaz residents, after a thorough analysis, the Secretariat concluded that "[t]he judgment on the just satisfaction should not have an impact on the issues raised until now by the Committee..." with respect to these two specific issues.²⁹

²⁷ DH-DD(2014)722, DH-DD(2014)1446.

²⁸ §51.

²⁹ H/Exec(2014)8- General stock-taking concerning the different violations established by the Court and analysis of the impact of the judgment of the 12 May 2014 on just satisfaction, paras. 28-31, 34.

Conclusion

Keeping in mind the necessity to conduct a legal examination and the importance of not prolonging this issue any further, we reiterate our request to the Deputies to proceed with the closure of this cluster as the necessary measures had been in place and are being effectively implemented for some years.