

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



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Meeting: 1172 meeting (4-6 June 2013) (DH)

Item reference: Communication from the authorities (memorandum on property rights of Greek Cypriots) (27/05/2013)

Communication from Turkey concerning the case of Cyprus against Turkey (Application No. 25781/94).

Information made available under Rule 8.2.a 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 : 1172 réunion (4-6 juin 2013) (DH)

Référence du point : Communication des autorités (mémoire sur les droits de propriété des chypriotes grecs)

Communication de la Turquie relative à l'affaire Chypre contre Turquie (requête n° 25781/94) (**anglais uniquement**).

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



Cyprus v. Turkey

Cluster on property rights of Greek Cypriots

- The European Court of Human Rights delivered another landmark decision after *Demopoulos, Meleagrou and others v. Turkey*,¹ on 2 April. The Court confirmed that the domestic remedies in the TRNC are effective and accessible, and to the extent that the applicants exhausted them in relation to immovable properties, the Immovable Property Commission, followed by the High Administrative Court on appeal, in fact provided Convention-compliant redress to them.
- The inadmissibility decision in *Meleagrou and others v. Turkey* is the first decision concerning property claims of Greek Cypriot applicants after they have resorted to the Immovable Property Commission and then the High Administrative Court in the TRNC.
- More specifically, in *Meleagrou*, the applicants applied to the Immovable Property Commission and asked for restitution only, not making any claims for any other type of remedies the Commission could grant to them, namely exchange or compensation, which could in turn permit the award of damages for loss of use or non-pecuniary compensation.
- The Immovable Property Commission evaluated the applications and proceeded to award restitution in respect of one plot and did not award pecuniary damages for loss of use as no particulars had been submitted in that regard by the applicants. No non-pecuniary damage was awarded as the plot had not been inhabited or used as a home. For the other plots that the applicants could prove ownership prior to 20 July 1974 either personally and/or as legal heirs to the 1974 owners, the applicants had not made any other claims except restitution, which could

¹ *Eleni Meleagrou and others v. Turkey*, application no. 14434/09.

not be awarded, and so other redress in the form of exchange or monetary compensation could not be made either under the terms of the applicable law.

- The European Court of Human Rights referred to the *Demopoulos* decision, and held that restitution did not have to be afforded in every case, and the remaining range of remedies available before the Immovable Property Commission were as effective. Because the applicants failed to ask for them with respect to the plots that could not be restituted, the Court found inadmissible that part of the application for failure to comply with Article 35 § 1 of the Convention. The exclusive claim of the applicants for restitution so that they do not give up claim of title to the land was not relevant for the Court's assessment. As for the remaining plots owned by a registered company, the Court found these complaints inadmissible for being incompatible with the Convention *ratione materiae* because, as shareholders, the applicants could not claim property rights in the land owned by a company still in existence. The Court also rejected the applicants' complaints under Article 6 § 1 of the Convention, relating to the procedure before the Immovable Property Commission, followed by the High Administrative Court, as manifestly ill-founded.
- Thus, in *Meleagrou* the Court confirmed its *Demopoulos* decision, and even went further and held that the available remedies in fact provided effective redress to the applicants, if and when exhausted.
- While this general measure has been in place for some time, CM-DH has been awaiting the Court's pronouncement on the *Cyprus v. Turkey* just satisfaction application even though the Court and the CM Secretariat are satisfied with the work of the Immovable Property Commission, and accordingly, considerable majority of the delegations are in favour of closure of this cluster.

- It should be recalled that the applicant seized the Court back in November 2011 within the context of the *Cyprus v. Turkey* case supposedly “with a view to getting a speedy resolution” on issues of law first, before the CM-DH proceeded with its decision on execution. Their claim in the just satisfaction application, on the other hand, was not one for compensation or damages, but one for a declaration: The applicant, in essence, asked the Court, again, whether the possibility of restitution through the Immovable Property Commission procedures must be preserved in all cases, and if so, whether additional measures are required to that end; and in case there is such an “obligation” under Article 46 of the Convention, whether this is discharged by the Court’s inadmissibility decision in *Demopoulos*.
- The Court in fact responded to this inquiry in the *Meleagrou* decision. The Court clarified that in *Demopoulos* the Court already held that restitution did not have to be afforded in every case, and the range of remedies available before the Immovable Property Commission, which included not only restitution but also exchange and compensation, were found to be effective. Thus, restitution, let alone its preservation in all cases, is not an “obligation” that must be discharged under Article 46 of the Convention. In other words, the Court, with its latest Meleagrou decision has already pronounced itself in response to the applicant’s request and therefore practically there is no reason to wait for additional confirmation.