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Meeting: 1507th meeting (September 2024) (DH)

Communication from Cyprus (20/08/2024) 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 : 1507^e réunion (septembre 2024) (DH)

Communication de Chypre (20/08/2024) relative à 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
No. 25781/94
PROPERTY RIGHTS OF DISPLACED PERSONS

MEMORANDUM
BY THE GOVERNMENT OF THE REPUBLIC OF CYPRUS
1507th CM(DH) MEETING, 17-19 September 2024

INTRODUCTION

1. As in previous years, three issues arise: (1) the interpretation of the two judgments of the Court of 2001 and 2014 in this case, whose execution it is the task of the Committee to supervise; (2) (in the alternative) the adequacy or otherwise of the IPC as a measure implemented with a view to comply with the Court's 2001 judgment; (3) (in any event) the continued non-payment of €90,000,000 plus interest, which the Court ordered to be paid as just satisfaction in its 2014 judgment.
2. Cyprus addresses those issues in that order. Its central position, echoed by an Independent Expert Opinion provided by Robert Spano, the last President of the Court, is that the time has now come to resolve the question of the interpretation of the Court's judgments, which has created the deadlock that Cyprus, Türkiye and no doubt other delegates have found so frustrating. The Committee could and should do this by requesting the Court, under the provision of the Convention designed for just this purpose, to resolve the disputed question of interpretation that holds the key to the remaining execution of this historic inter-State judgment.

THE ISSUES

(1) INTERPRETATION - ARTICLE 46(3) ECHR

3. For too many years, the supervision of this cluster has been fatally hindered by a difference of opinion concerning the scope of the Court's judgment of 2001. Clarification was provided by the Court at paragraph 63 of its judgment of 2014, when it confirmed that compliance with the 2001 judgment "*could not be consistent with any possible permission, participation, acquiescence or other form of complicity in any*

unlawful sale or exploitation of Greek-Cypriot homes and property in the northern part of Cyprus”. However, experience has shown that even this clarification has not been sufficiently clear for a consensus view to be reached:

- a. According to Cyprus, the availability of certain remedies from the IPC cannot remove what the Court found to be Türkiye’s responsibility to cease its continuing interference with Greek-Cypriot owned properties in the occupied areas of the island.
 - b. According to Türkiye, the Court’s ruling was more limited and supervision is limited to the workings of the Immovable Property Commission or IPC – the mechanism, considered in *Demopoulos* and other cases, that was introduced by “TRNC Law 65/2007” to provide compensation for property interference.
4. The existence of these two possible interpretations was first raised by the Secretariat in 2014, immediately after the Court delivered its 2014 judgment on Just Satisfaction.¹ Since that time:
- a. Cyprus has argued consistently for decisions that reflect its preferred interpretation, which it has sought to persuade the Committee is clearly the correct one.² In the alternative, it has submitted that the IPC does not operate satisfactorily.
 - b. Türkiye, conversely, has sought to close the supervision of this cluster on the basis that its own, more narrow, interpretation is correct (indeed indisputable), and that the creation of the IPC, which it claims operates satisfactorily, is sufficient to dispense of the question of its compliance with the Court’s main judgment.

¹ H/Exec(2014)8, §36. The Secretariat in 2023 maintained its view that both readings of the judgment are “possible”: CM/Notes/1475/H46-37, p7.

² See, most recently, DH-DD(2023)833, paras 6-31. As Cyprus pointed out at paras 28-29, the significance of §63 was implicitly acknowledged by its citation in the last Decisions taken on this cluster, at the September 2021 CM(DH): CM/Del/Dec(2021)1411/H46-36, para 2.

5. Neither State has been successful in its goal. Türkiye's attempts to secure closure have failed in each of the years 2022 and 2023. Neither has the Committee been prepared to adopt decisions along the lines sought by Cyprus. The result has been a stalemate, and the unproductive use of the Committee's time over many years.
6. Meanwhile, the "*Turkification*" of the occupied areas has continued – a process which is inconsistent with international law and which aims at pre-empting a solution of the Cyprus problem that would envisage the return of the displaced to their homes and properties and the restoration of the rights as envisaged by the Convention. Since 2001, significant development has occurred in the Keryneia District, in the Nicosia District, and in the Morfou, Karpasia and Ammochostos areas. Details of the position to June 2023 were provided to the Committee prior to last year's meeting. An updated report of the Department of Lands and Surveys, entitled "Analysis of Illegal Development in the Occupied Areas of Cyprus", identified 30 new developments in the occupied areas in the year to June 2024.³
7. Decisive action is needed if the Committee is to fulfil its mandate. This in turn requires the Committee fully to understand the task it has been given by the Court. Fortunately, a solution exists in the form of Article 46(3) ECHR, introduced in 2010 and not yet used. In short, where supervision has been hindered by a problem of interpretation, Article 46(3) permits the CM(DH) to refer the matter to the Court for an authoritative ruling. Cyprus invited the Secretariat to reflect on this before the meeting of September 2023.⁴ By this Memorandum, it now formally requests the making of an Article 46(3) reference.

³ 'Evergreen' (Akanthou), 'Akol Marine' (Aigialousa), 'Aloha Phase 1' (Akanthou), 'Aloha Phase 2' (Akanthou), 'Blue Sea Hotel' (Rizokarpaso), 'Blueberry (Evergreen)' (Agios Amvrosios), 'Caesar Blue Line' (Gastria), 'Casa Mia Villas' (Agios Sergios), 'C'est la Vie (Evergreen)' (Kalograia), 'Dream Life Karpasia' (Aigialousa), 'Erbatu Hills' (Agios Sergios), 'Four Seasons Life II' (Gastria), 'Kaizen by Ozyalcin' (Bellapais), 'Karmi Valley Homes' (Karmi), 'Kervansaray Loft' (Agios Georgios), 'La isla Villas' (Agios Sergios), 'Leymosoun Park' (Keryneia), 'Life Village' (Thermia), 'Majestic' (Agios Sergios), 'Moonlight Villas' (Agios Amvrosios), 'Natulux Projesi' (Keryneia), 'Neo Residence' (Agios Sergios), 'Olea Projesi Noyanlar' (Lefkonoiko), 'Phuket Health and Wellness Resort' (Akanthou), 'Salos' (Akanthou), 'Sun Valley Countryside (Bataslar)' (Agios Amvrosios), 'Sunprime' (Kalograia), 'Sunset Heaven' (Aigialousa), 'Tatlisu Marina' (Akanthou), 'Venice' (Spathariko).

⁴ DH-DD(2023)833, para 31.

8. Contrary to what may be suggested by Türkiye in its Memorandum of July 2024:
- a. This is a highly appropriate time for the Article 46(3) procedure to be invoked. After years of deadlock, it is now quite clear (as was not the case in 2014) that supervision has been hindered by a fundamental disagreement on the interpretation of the 2014 judgment.
 - b. While the eventual ruling of the Court cannot of course be predicted with certainty, the interpretation advanced by Cyprus is at the very least strongly arguable.⁵
9. These two points are each confirmed in an Independent Expert Opinion dated 1 July 2024, commissioned by Cyprus from Robert Spano, a Judge of the Court from 2013-2022 and its President from 2020-2022. His 43-page Opinion forms an Annex to this Memorandum and is summarised in its own paragraph 9. In brief outline, the independent and fully-reasoned legal opinion of Mr Spano is that:
- a. The rival interpretations of the 2014 judgment are both to be respected, but cannot be reconciled: clarity is therefore needed (para 36).
 - b. While only the Court can rule conclusively on the issue (para 73), the interpretation advanced by Cyprus is “*the one that better accords with the core rationales of the 2001 and 2014 Judgments, established case-law of the Court and the principles of State responsibility under international law*” (para 50). In particular:
 - i. §63 of the 2014 judgment “*seems crystal clear on its face*”: it explicitly excludes an understanding that *Demopoulos* can, on its own, be considered to dispose of the question of Türkiye’s compliance with the 2001 judgment (paras 21-22). The Court has neither exonerated Türkiye from the continuing violations established in the 2001 Judgment, nor

⁵ Türkiye’s position is founded on the extreme proposition that its own interpretation is “*the only justified reading*” (July Memorandum p5) and “*the only justified interpretation*” (p7), which is further described as “*the conclusive interpretation of CM(DH)*” (p7). But the CM(DH) has not adopted an interpretation, conclusive or otherwise, and Türkiye’s view is obviously unsustainable in the face of Robert Spano’s clear and measured conclusion on the relative strength of the two interpretations.

approved a scenario that would allow other persons to continue to become victims of the same violations (para 47).

- ii. The State's duty to compensate is accompanied as a matter of international law by separate obligations to cease and prevent repetition of ongoing violations. Were that not the case, States would be at liberty to continue with wrongful conduct safe in the knowledge that no international responsibility would ensue as long as they paid for it (paras 66-67).
- iii. The creation of conditions that render permanently impossible the restitution of property to Greek Cypriot owners contravenes, in addition, the separate obligation under international law not to aggravate a dispute, or act in a way that would prejudice its peaceful resolution (paras 68-69).

See generally paras 9.1-9.3, 19-22 and 35-73.

- c. There are "*strong grounds militating in favour of triggering the procedure under Article 46(3) of the Convention*" (para 73), given that supervision of the execution of the inter-State judgments has long been hindered by the disputed interpretation (para 83). See generally paras 9.4-9.5 and 74-88.

10. Mr Spano considered closure of the cluster on the basis that it is sought by Türkiye to be unjustified:

"... I caution against the view that it can be considered justified now to close the execution of this part of the process by proceeding on the basis that the 2014 Judgment can be understood to mean that Türkiye does not have to take any further measures to comply with the 2001 Judgment with respect to the continuing violations creating new victims for the same wrong admonished by the Court."

(para 72).

11. In addition, at para 87 of his Independent Expert Opinion, Mr Spano observed that the current significance of the issue in dispute extends well beyond the particular circumstances of Cyprus:

“Hence, on the whole, I consider the circumstances ripe for triggering the application of Article 46(3) to request the Committee of Ministers to refer the matter to the Court for an interpretative ruling. This is also justified when one appreciates the potential ramifications of the Secretariat’s interpretation of *Demopoulos* in its broader international context in the light of current developments. If the proposition is accepted, that an occupying power can take measures to effectively eliminate its duty of *restitution in integrum* under the Convention on the basis of *ex post facto* domestic law authority, and thus escape from its obligations of compliance merely by paying compensation, such a stipulation is likely to have grave consequences. For example, invading powers following an act of aggression would have every incentive to transfer, alienate and exploit occupied territory and eliminate *in toto* an obligation for restitution of property without international responsibility, if all that was required was to establish a domestic mechanism in order to *ex post facto* (and unilaterally) determine compensation.”

He illustrated his point by reference to the recent cases of *Ukraine v Russia (re Crimea)* and *Georgia v Russia (II)*. For this fundamental reason also, the case for seeking an authoritative ruling on the disputed interpretation is submitted to be a compelling one.

12. Mr Spano concluded his opinion by formulating a proposed question for the purposes of an Article 46(3) reference. That formulation drew heavily on the terms in which the Department for Execution of Judgments itself expressed, in 2014, the possible interpretations of §63 of the 2014 judgment.
13. The eminence of the author of the Independent Expert Opinion, and the detailed and well-substantiated reasons advanced for its conclusions, are submitted to render its basic elements (the strength of the interpretation favoured by Cyprus, and the existence of strong grounds for an Article 46(3) reference) unanswerable. It is difficult to imagine that the Committee could consider closure of this cluster in circumstances where a former President of the Court has advised in these terms about the dangers of that course, and the meaning of the judgment whose execution the Committee is supposed to be supervising. That is so particularly when, on the interpretation consistently advanced by Cyprus, acknowledged as arguable by the Secretariat and favoured by Mr Spano, blatant non-compliance with the judgment continues in the occupied areas.

14. Cyprus accordingly requests a referral to the Court, under Article 46(3) ECHR, of the question identified at the end of the Independent Expert Opinion.

(2) REMEDIES – THE IPC

15. Türkiye’s request for closure of this cluster focuses entirely on the position of the IPC. The first and obvious point to be made in response is that even the remedies provided for under “Law 65/2007” were in every respect adequate, this would be only part of what is required for compliance with the judgment whose execution is under supervision by the Committee. As explained with exemplary clarity in the Independent Expert Opinion of Robert Spano:

“[W]hat the Court did not do in *Demopoulos* or its progeny, and I wish to make this clear, was to exonerate Türkiye wholesale with respect to continuing violations established in the 2001 Judgment going forward, nor to bless a scenario that would contradict the essence of that judgment in a way that allows other persons to continue to become victims of the same violation ...”.⁶

Even if the workings of “Law 65/2007” and the IPC were beyond reproach, in other words, there could be no possible basis for closure, at least until such time as the Court may rule *against* Cyprus’s interpretation of §63 in a reference under Article 46(3) ECHR.⁷

16. With that important caveat, and without repeating its detailed treatment of the issue in its Memorandum of July 2023,⁸ Cyprus turns to the position of the IPC. Its submission, in short, is that neither *Demopoulos* nor the subsequent case-law of the Court is sufficient to dispose entirely of the practical issues identified by Cyprus and by the Committee itself in relation to the effectiveness or otherwise of the IPC and the remedies that it is supposed to provide.

⁶ Independent Expert Opinion, para 47.

⁷ Cyprus does not expect this, for the reasons given by Mr Spano: but it acknowledges that no one can be certain of what the Court will say.

⁸ DH-DD(2023)833, paras 32-60.

17. In its Decisions of September 2021, the Committee:

- a. invited the Turkish authorities to clarify whether the calculations of increases in property value when deciding whether restitution is possible includes only increases due to development or also increases due to inflation;
- b. further invited them to provide information on the regulation and application in practice of other avenues to prevent any changes to a property which is subject to a pending claim for restitution before the IPC; and
- c. invited the Turkish authorities to submit statistical data on the functioning of the IPC, and in particular on:
 - i. the number of cases pending,
 - ii. the length of time they have been pending,
 - iii. the number of awards of compensation made,
 - iv. the total amount and the number of awards that have been paid in full so far, and
 - v. the funds and staff at its disposal.⁹

Those invitations would not have been made unless the Committee considered the answers to be of relevance to the continued supervision of this cluster. The response to them is submitted to have been inadequate, for the reasons given by Cyprus in its Memorandum of July 2023 as supplemented here.

18. In particular, as to the statistical data requested by the Committee, it must be said that the position is even more concerning than it was in 2023.

19. It is evident, first of all, that claims are simply not being resolved within anything resembling what the Court itself considers to be a reasonable time. As of 2 August 2024, according to the IPC's own website:

- a. Of the 7659 applications lodged with the IPC, only 1835 had been concluded (the great majority by friendly settlement).

⁹ Cm/Del/Dec(2021)1411/H46-36, paras 4-5.

- b. No fewer than 74.6% of claims to date were brought before the end of 2013 (5712 out of 7659).
- c. It follows from these facts that even if all the applications which *have* been resolved were brought before the end of 2013, no fewer than 3877 claims now more than 10.5 years old would remain unresolved. That number will be larger if, as is likely, some of the applications which have been resolved were brought after 2013.
- d. The Court found a violation of Article 6 ECHR for lack of “*appropriate expedition*” in *Joannou*, a case much relied upon in Türkiye’s latest Memorandum. By the time of judgment in December 2017, that case had been pending for some 9 years¹⁰ - less time than at least 4000 of the 5824 cases that are pending now.
- e. It is accordingly clear that whilst there may not have been sufficient evidence in *Joannou* (or the other, even older, cases relied upon by Türkiye)¹¹ for the Court to find that the IPC system was compromised by systemic and unacceptable delay, conclusive evidence – from the IPC itself – exists now. *Joannou*, in which Article 6 was held to have been violated, can be seen as of 2024 to be the rule rather than an exception.

20. Secondly, there are unacceptable delays in both the award and payment of compensation. Cyprus repeats the points made in its July 2023 Memorandum at paragraphs 48-50, which are based largely on figures supplied by Türkiye in June 2022. Not all those figures are available in updated form on the IPC website, but it does not appear likely that the essential picture has changed. There is every reason to believe that “*the complete mismatch between the funding of the IPC and the awards that it purports to make*”, as it was described in Cyprus’s Memorandum of July 2023, continues to exist.

¹⁰ *Joannou v Turkey*, no. 53240/14, judgment of December 2017, §104.

¹¹ *Demopoulos* was decided in March 2010, *Meleagrou* in May 2014 and *Loizou* in October 2017.

(3) JUST SATISFACTION

21. In its 2014 judgment, the Grand Chamber of the Court ruled that Türkiye was to pay the Government of Cyprus, by 12 August 2014, €30,000,000 in respect of non-pecuniary damage suffered by the relatives of missing persons and €60,000,000 in respect of non-pecuniary damage suffered by the enclaved Greek Cypriots of the Karpas peninsula. It indicated that these amounts, together with interest, should be distributed by the Government of Cyprus to the individual victims, under supervision of the Committee, within 18 months of the date of payment or any other period considered appropriate by the Committee.
22. The Committee has recalled in each of its decisions on the inter-State case since June 2015 that the obligation to pay the just satisfaction awarded by the Court is unconditional, and has called upon the Turkish authorities to pay the sums due. Despite these calls, and the interim resolution issued by the CM(DH) in September 2021, Türkiye has failed to provide any reason for non-payment, or to hold out any prospect of non-payment. Its Memorandum of July 2024 is once again completely silent on the issue.
23. Türkiye's failure to discharge or even to acknowledge its obligations is not only an affront to the rule of law, to justice and to the principle that the aggressor should pay: it has obvious consequences for the individuals who have been denied the compensation due to them. Cyprus asks the Committee to deplore this default in the strongest terms, and to urge Türkiye to pay the sums due without further delay.

CONCLUSION

24. Cyprus concludes by returning to the central point. The supervision of the execution of the displaced cluster is an issue of great and continuing importance for the governments of Cyprus and Türkiye, for all concerned with property on the island, and more broadly as a precedent for understanding and applying the legal obligations of an invading or occupying power.
25. Supervision has been frustrated for too long by a dispute over the meaning of the Court's judgments.

26. As the Court's former President Robert Spano has indicated, the interpretation advanced by Türkiye is of doubtful merit and it cannot now be considered justified to close the supervision of this cluster. However, in Article 46(3) ECHR, he advises that an appropriate mechanism exists for the resolution of the dispute by the only body that can conclusively do so. The Committee is invited to act decisively, and to invoke that mechanism without further delay.

APPENDIX

DGI

20 AOÛT 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

INDEPENDENT EXPERT OPINION OF ROBERT SPANO

1 JULY 2024

DGI

20 AOUT 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Robert Spano

Independent Expert Opinion

On the Interpretation of Paragraph 63 of the Judgment of the European Court of Human Rights in *Cyprus v Turkey* (just satisfaction), [GC], no. 25781/94, 12 May 2014

Paris, 1 July 2024

A. Introduction

1. I, Robert Spano, submit this Opinion based upon my personal knowledge, except as to those statements where I have expressly stated that my Opinion is based upon information and belief, and I believe all such statements, and the information upon which they are based, to be true.
2. I am an Icelandic/Italian citizen, born on 27 August 1972. I am admitted to the Icelandic Bar and registered as a Registered Foreign Lawyer in the United Kingdom.
3. I am a Partner at Gibson, Dunn & Crutcher LLP (London and Paris), practising in the field of international arbitration, public international law, European human rights law and European Union Law. I serve as a Visiting Professor of Law, University of Oxford, and a Professor of Law, University of Iceland. Also, I am currently a Visiting Fellow of Mansfield College, Oxford. I previously served as a Judge of the European Court of Human Rights (2013-2022) and as the President of the Court (2020-2022). During my term of office as Judge and President of the European Court of Human Rights, I took part in deciding some of the landmark judgments in the field of European human rights law and on the relationship between the European Convention on Human Rights and public international law, including in inter-state cases, such as the Grand Chamber judgments in *Georgia v Russia (I) (Just Satisfaction)* [GC] (no. 13255/07, 31 January 2019), *Georgia v Russia (II)* [GC] (no. 38263/08, 21 January 2021), *Ukraine v Russia (Re Crimea)* [GC] (nos. 20958/14 and 38334/18, 14 January 2021) and *Slovenia v Croatia* [GC] (no. 54155/16, 16 January 2020). I am an acknowledged expert in European and international human rights law, public international law and in the field of international dispute resolution. I have published extensively in these fields. I am a designated member of the Panel of Arbitrators and Conciliators of the World Bank's International Centre for the Settlement of Investment Disputes (ICSID).
4. This Independent Expert Opinion was commissioned by the Republic of Cyprus ("Cyprus"). I thus wish to make clear that the Opinion constitutes an independent expert opinion reflecting my own objective and unbiased legal views on the issues discussed.

Therefore, this Opinion is not to be understood as advocacy for any particular legal position.

5. In particular, I have been asked to provide an Opinion on the interpretation of paragraph 63 of the 2014 Just Satisfaction Judgment of the European Court of Human Rights (“**ECtHR**” or “**Court**”) in *Cyprus v Turkey* (“**2014 Judgment**”)¹ and whether there is a problem of interpretation of that judgment hindering the supervision of its execution so that the matter could be referred back to the Court for a ruling on the question of interpretation under Article 46(3) of the European Convention on Human Rights (“**ECHR**” or “**Convention**”). In particular I have been asked to: (i) consider whether the dispute on the interpretation of paragraph 63 is an appropriate and/or proper question for a referral to the Court under the Article 46(3) procedure; (ii) if the answer is in the affirmative, I have been asked to consider the possible formulation of an interpretive question that might be referred to the Court under this procedure, both in terms of procedure in the Committee of Ministers (“**CM(DH)**”),² and in substance; and (iii) finally, I have been asked to assess the merits of Cyprus's position on the interpretation of paragraph 63 of the 2014 Judgement, as discussed further below.
6. I have prepared this Opinion on the basis of a number of documents submitted before the CM(DH) regarding the execution of the judgment of 10 May 2001 rendered by the Court in the inter-State case, *Cyprus v Turkey* (the “**2001 Judgment**”)³, as well as pleadings submitted in the inter-State case itself, which were either publicly available and/or provided to me. The specific documents I have been provided with consist of pleadings;⁴ Notes of

¹ *Cyprus v Turkey*, [GC], no. 25781/94, ECHR 2014-II (“**2014 Judgment**”).

² DH meetings are Deputies’ meetings which deal with the supervision of the execution of judgments and decisions of the Court.

³ *Cyprus v Turkey* [GC], no. 25781/94, §§ 172-173 and 175 (Article 8), 185-187 and § 189 (Article 1 of Protocol No.1), ECHR 2001-IV (“**2001 Judgment**”).

⁴ Pleadings submitted in the inter-State case, *Cyprus v Turkey* (no. 25781/94): Cyprus’s Letter to the Court with Claims for Just Satisfaction, 11 March 2010; Reply Letter from the Court, 25 October 2010; Observations of Turkey on Possible Application of Article 41 of the Convention, 7 March 2011; Observations by the Republic of Cyprus on Three Questions Posed by the Court, 8 March 2011; Application for Just Satisfaction (Article 41) on behalf of the Republic of Cyprus, 25 November 2011 (Vol. I and II); Letter from the Court with Further Questions,

the Secretariat;⁵ information documents;⁶ reports;⁷ and communications and memoranda,⁸ all of which are available to the parties to the 2001 Judgment, Cyprus and the Republic of Türkiye (“Türkiye”), as far as I understand. I have also reviewed and relied upon other materials including judgments, decisions, opinions by adjudicative bodies, academic commentary, and explanatory and guidance notes published by European and international organisations and institutions which are publicly available, as cited throughout this Opinion.

7. My mandate as a Judge of the Court ended on 31 October 2022. I note that under Rule 4(2) of the Rules of Court of the ECtHR a former Judge may not represent a party or third party in any capacity “*in proceedings before the Court*” until a period of two years from the date on which he or she ceased to hold office has elapsed. Given that my engagement in this matter is limited to providing this Opinion and does not entail any representation of Cyprus before the Court in any capacity, Rule 4(2) does not preclude me from providing this Opinion.⁹

21 March 2012; Application for Just Satisfaction (Article 41) on behalf of the Republic of Cyprus (June 2012); Further Observations on behalf of the Republic of Cyprus (June 2012); Further Observations of Turkey on the Two Questions Addressed to the Parties and on Issues Regarding Claims for Just Satisfaction, 26 October 2012.

- ⁵ 1475th meeting of the CM(DH), 19-21 September 2023, H46-37 Cyprus v. Turkey (no. 25781/94), CM/Notes/1475/H46-37.
- ⁶ *Cases examined by the Committee of Ministers concerning the property rights and homes of displaced Greek Cypriots, Consequences of the inadmissibility decision adopted by the European Court on 5 March 2010 in the case of Demopoulos v Turkey and 7 other cases*, Information Document CM/Inf/DH(2010)21, 17 May 2010 (“**Information Document CM/Inf/DH(2010)21**”); and Information Document CM/Inf/DH(2010)36, 2 September 2010 (“**Information Document CM/Inf/DH(2010)36**”).
- ⁷ *Stock-taking concerning the violations established by the Court in the case Cyprus against Turkey and analysis of the impact of the judgment of 12 May 2014 on the just satisfaction*, H/Exec (2014)8, 25 November 2014.
- ⁸ Communication from Cyprus (11/09/2018) concerning the case of *Cyprus v Turkey* (25781/94) for the 1324th meeting (September 2018) (DH), DH-DD(2018)873, 12 September 2018; Communication from Cyprus (24/05/2019) concerning the case of *Cyprus v Turkey* (25781/94) for the 1348th meeting (June 2019) (DH), DH-DD(2019)602, 27 May 2019; Communication from Cyprus (07/09/2021) concerning the case of *Cyprus v Turkey* (25781/94) for the 1411th meeting (September 2021) (DH), DH-DD(2021)886, 8 September 2021; Communication from Cyprus (23/08/2022) concerning the case of *Cyprus v Turkey* (25781/94) for the 1443rd meeting (September 2022) (DH), DH-DD(2022)875, 24 August 2022; Communication from Cyprus (07/07/2023) concerning the case of *Cyprus v Turkey* (25781/94) for the 1475th meeting (September 2023) (DH), DH-DD(2023)833, 10 July 2023; Communication from Cyprus (31.08.2023) for the 1475th meeting (September 2023) (DH), DH-DD(2023)1040, 31 August 2023.
- ⁹ See also, Article XI of the ECtHR’s *Resolution on Judicial Ethics*, adopted by the Plenary Court on 21 June 2021.

8. In the present Opinion, I will first provide a summary of my conclusions (**Section B**). I will then turn to the factual and procedural background to the underlying inter-State dispute between Cyprus and Türkiye (**Section C**). I will subsequently (i) examine the origin of the interpretative dispute with respect to paragraph 63 of the 2014 Judgment (**Section D**); (ii) and then proceed to explaining what I consider, on balance, to be the preferred interpretation of this paragraph of the judgment in light of the case-law of the ECtHR taking account of, as relevant, principles of public international law on State responsibility (**Section E**). Finally, I will address whether the dispute on the interpretation of paragraph 63 is an appropriate and/or proper question for a referral to the Court under the Article 46(3) procedure of the Court (**Section F**), followed by my view as to the possible formulation of the question of interpretation under Article 46(3) that might be submitted under this procedure. (**Section G**).

B. Summary of Conclusions

9. A summary of my conclusions in this Opinion is as follows:

- 9.1 First, from a plain reading of paragraph 63 of the 2014 Judgment, whilst there are certainly pragmatic considerations that might militate in favour of an alternative conclusion, I conclude that the Court's remarks on *Demopoulos and Others v. Turkey* ("**Demopoulos**")¹⁰ in this paragraph were not intended to conclusively resolve the question of Türkiye's Convention responsibility arising under the principal 2001 Judgment in the inter-State case,¹¹ for its continuing violation of Article 1 of Protocol 1 (in respect of access, control and use of property as well as compensation for interference with property rights). Instead, they were limited to the narrow premise of *Demopoulos* on the exhaustion of domestic remedies aimed at compensating those who already had victim status via the proposed domestic mechanism put forward by the Turkish authorities, which the Court ultimately considered to be accessible and capable of efficiently delivering redress. As such,

¹⁰ *Demopoulos and Others v. Turkey* [GC], nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, § 127, ECHR 2010-I ("**Demopoulos**").

¹¹ 2001 Judgment, §§ 172-173 and 175 (Article 8), 185-187 and § 189 (Article 1 of Protocol No.1).

the preferred and better reading of paragraph 63 of the 2014 Judgment militates against the conclusion suggested by the Secretariat of the Committee of Ministers that *Demopoulos* disposes of the question of Türkiye's compliance, requiring or justifying at this stage the closing of the supervision of execution of the 2001 Judgment (**see further at paragraphs 37-47 below**).

9.2 Second, an interpretation of *Demopoulos* that implies that States would be at liberty to continue with wrongful conduct safe in the knowledge that no international responsibility would ensue as long as they provided compensation *ex post facto* would be at odds with the core *rationales* of the 2001 and 2014 Judgments, general principles of public international law which lie at the heart of the requirements of Article 46 of the Convention itself and the Court's long-standing jurisprudence. As canvassed further in this Opinion, a continuing violation engages State responsibility over the entire period during which the unlawful act continues and the non-conformity exists, even outside of a State's national borders, to the extent such State exercises control over that territory. But more importantly, my conclusion also reflects the fact that *restitutio in integrum* alongside cessation of a continuing violation remain the primary aims of the international law on State responsibility enshrined in Article 46, which is augmented by a duty of prevention of repetition of the unlawful act so as not to create new victims (**see further at paragraphs 49-67 below**).

9.3 Third, the above conclusions are further supported by the separate obligation under international law not to aggravate a dispute, or act in a way that would prejudice its peaceful resolution, such that States are estopped from creating *de facto* circumstances that would permanently and effectively eliminate their obligations under international law (**see further at paragraphs 68-70 below**).

9.4 Fourth, and notwithstanding my independent opinion as summarised above, given the current impasse at the CM(DH) resulting from the Secretariat's alternative interpretation of paragraph 63 of the 2014 Judgment and *Demopoulos*, hindering execution of the 2001 Judgment, there are in my view strong grounds for the

procedure under Article 46(3) of the Convention to be employed, as suggested by the Secretariat itself in the past. More specifically, the procedure in Article 46(3) is available where “*the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment*”. On the basis of the guidance drawn from the explanatory remarks and current Rules of Court applicable to this procedure, a request aimed purely at interpretation of the express terms of the 2014 Judgment, as opposed to passing judgment on the adequacy of Türkiye’s compliance with the judgment, would likely satisfy the high threshold required for Article 46(3) of the Convention which the internal guidance from the Committee suggests would require “*exceptional*” circumstances. It would also be highly unlikely to create a substantial risk of overburdening the Court by opening the floodgates to further requests (**see further at paragraphs 73-86 below**).

- 9.5 Fifth, in light of the potential ramifications of the interpretation suggested by the Secretariat of *Demopoulos* in its broader international context, I consider that there are strong grounds to proceed with referring to the Court a question or questions that would assist in clarifying its 2014 Judgment in a way that upholds the essence and spirit of Article 46 of the Convention via the Article 46(3) procedure. Ultimately, it is the Court alone that can conclusively resolve the impasse at the CM(DH) as to the meaning of paragraph 63 of the 2014 Judgment and its nexus with *Demopoulos* for the purposes of execution of the 2001 Judgment. For that purpose, and in light of the strict requirements for a referral, I propose the suggested formulation of possible questions in Section G below (**see further at paragraph 87 below**).

C. Factual and Procedural Background to the Dispute

10. In order to frame this Opinion, it is worth setting out a brief summary of the relevant factual and procedural background to the dispute. In doing so, I have borrowed and adapted the helpful summaries from various judgments rendered by the Court and the decisions adopted by the Secretariat of the CM(DH) in the context of the dispute between Cyprus

and Türkiye.¹² A detailed history of the proceedings would be overly lengthy and unnecessary, so I have focused on the points that are relevant to this Opinion.

11. In its 2001 Judgment, the Court found numerous violations of the Convention in respect of the unlawful occupation of the northern part of Cyprus by Türkiye in 1974.¹³ The Court found, *inter alia*, a continuing violation by Türkiye of Article 8 of the Convention and Article 1 of Protocol No. 1 by reason of an official policy and administrative practice of physically excluding Greek Cypriots from their property in the northern part of Cyprus and permitting the unlawful exploitation and expropriation of their property. The Court held that displaced Greek Cypriot property owners in the occupied areas of Cyprus were being “denied access to and control, use and enjoyment of their property”¹⁴ (having not otherwise lost title) and these restrictions imposed by the ‘Turkish Republic of Northern Cyprus’ (“TRNC”) were regarded by the Court as “a clear interference with the right of the displaced Greek Cypriots to the peaceful enjoyment of possessions within the meaning of the first sentence of Article 1 of Protocol No. 1.”¹⁵
12. The Court further noted that, “as regards the purported expropriation, no compensation has been paid to the displaced persons in respect of the interferences which they have suffered and continue to suffer in respect of their property rights”.¹⁶ As such, there had 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”,¹⁷ (emphasis added). Finally, it found a violation of Article 13 of the Convention due to the absence of a remedy for displaced Greek Cypriots to contest interferences with their rights

¹² See, 2001 Judgment, §§ 172-173 and 175 (Article 8), 185-187 and § 189 (Article 1 of Protocol No.1).

¹³ The Court noted that it agreed with the analysis of the Commission, which had found it “established on the evidence that at least since June 1989, the “TRNC” authorities no longer recognised any ownership rights of Greek Cypriots in respect of their properties in northern Cyprus”, and that “the physical exclusion of Greek-Cypriot persons from the territory of northern Cyprus is enforced as a matter of “TRNC” policy or practice”. See, 2001 Judgment, §§ 184-185.

¹⁴ *Id.*, §189.

¹⁵ *Id.*, § 187.

¹⁶ *Id.*

¹⁷ *Id.*, § 175.

under Article 8 of the Convention and Article 1 of Protocol No. 1 (violation of Article 13).¹⁸ The Court adjourned the question of the possible application of Article 41 of the Convention on just satisfaction, and Cyprus pursued the execution of the 2001 Judgment through the Committee of Ministers of the Council of Europe.

13. On 22 December 2005, the Court issued its decision in the pilot case, *Xenides-Arestis v. Turkey*, where it indicated under Article 46 that Türkiye should introduce a remedy which would secure effective redress for the Convention violations identified in all similar applications pending before it.¹⁹
14. Following this pilot judgment, as a means to comply with the judgment and the 2001 Judgment itself, Law No. 67/2005 on the Compensation, Exchange or Restitution of Immovable Property (the “2005 Law”) was adopted by the ‘TRNC’, setting up a compensation, exchange and restitution mechanism via an “Immovable Property Commission” (“IPC”), to deal with property claims of Greek Cypriots in the northern part of Cyprus.
15. The mechanism envisaged under the 2005 Law works as follows: Greek Cypriots are allowed to apply to the IPC for restitution, compensation and/or exchange, in respect of immovable property located in the northern part of the island that was registered in their names on 20 July 1974 (or in the name of a person of whom they are the legal heirs). The applicant may also claim compensation for loss of use and/or non-pecuniary damages in addition to restitution, exchange or compensation in return for immovable property.²⁰ As per the 2005 Law, a claim for restitution is considered on the basis of criteria set out therein. If the property in question falls into one of the categories making it ineligible for restitution, the IPC can make a proposal to exchange it for property belonging to Turkish Cypriots situated in the southern part of Cyprus or to receive financial compensation.²¹ The value

¹⁸ *Id.*, § 194.

¹⁹ *Xenides-Arestis v Turkey*, no. 46347/99, § 40, 22 December 2005 (Final version, 22 March 2006).

²⁰ As noted by the Court in *Demopoulos*, § 37.

²¹ For more details see the relevant provisions of this Law presented in full in the *Demopoulos* decision, § 37.

of a property is calculated on the basis of its market value in 1974, increased each year with reference to the “market value index” of average increases and decreases in property prices in northern Cyprus. Non-pecuniary damages can be awarded for the loss of access to a home, taking into account personal and family links. The decisions of the IPC can be appealed before the High Administrative Court in the ‘TRNC’.²²

16. The above mechanism and the 2005 Law itself came under the scrutiny of the Court a few years later. In its inadmissibility decision in *Demopoulos and Others* of 1 March 2010, the Grand Chamber found that the 2005 Law, “provides an accessible and effective framework of redress in respect of complaints about interference with the property owned by Greek Cypriots.”²³ With regard to the provisions limiting the availability of restitution under Law 2005, the Court held that, taking into account the passage of time, the need to respect the rights of third parties, and the principle that the choice of implementation of redress for breaches of property rights was for the respondent State, “no problem therefore arises as regards the impugned discretionary nature of the restitutionary power under Law No. 67/2005”.²⁴ Hence, the Court dismissed the applications for failure to exhaust the available domestic remedies under the 2005 Law as per the rule in Article 35 of the Convention.²⁵
17. Based on the Court’s assessment in *Demopoulos*, in 2010, the Secretariat to the CM(DH) (which is mandated to supervise the execution of the 2001 Judgment under Article 46 of the Convention) proposed to the Committee to close its examination of the 2001 Judgment concerning the home and property rights of Greek Cypriot displaced persons.²⁶ In the Secretariat’s view, given that “all the persons concerned by the judgments under

²² See Secretariat Notes on the Agenda for 1475th meeting of the CM(DH) on 19-21 September 2023 (CM/Notes/1475/H46-37), 5 September 2023, p. 2.

²³ *Demopoulos*, §§ 127.

²⁴ *Id.*, §§ 84 and 116-119.

²⁵ Article 35 of the Convention provides that: “1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of four months from the date on which the final decision was taken.[]” The Court, accordingly, emphasised at § 69 of *Demopoulos* that: “it is not a court of first instance; it does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of basic facts or the calculation of monetary compensation.”

²⁶ See Information Documents CM/Inf/DH(2010)21 and CM/Inf/DH(2010)36.

*examination have a system of redress available to them which is capable of putting an end to the continuing violation of their property rights, as identified by the Court [in Demopoulos], [...] no additional measure, of a protective or any other nature, appears necessary for the purposes of execution”.*²⁷ However, “a large number of delegations” wished to have more time to consider in greater depth the questions raised during the discussions,²⁸ so that at the 1092nd meeting (held in September 2010), the Deputies decided to resume consideration of the *Cyprus v. Turkey* case “at one of their forthcoming meetings.”²⁹

18. In November 2011, Cyprus submitted to the Court an application for just satisfaction in the inter-state case, also requesting the Court to adopt a “declaratory judgment” stating that: “(i) *Turkey is required by Article 46 to abide by the judgment in Cyprus v. Turkey by abstaining from permitting, participating or acquiescing or being otherwise complicit in, the unlawful sale and exploitation of Greek Cypriot homes and property in the northern part of Cyprus; and (ii) this obligation arising under Article 46 is not discharged by the Court’s admissibility decision in Demopoulos and Others.*”³⁰ I note that the Republic of Cyprus submitted extensive observations in support of its claims, but for the sake of expediency and space I will not refer to them at length in this Opinion as they are a matter of public record.
19. In its 2014 Judgment, the Court began its response in paragraph 62 by making clear that the “*respondent State is bound by Article 46 and thus by its international obligations to comply with the principal judgment*”. It then reaffirmed the general principle that the respondent State remains free to choose the means by which it will discharge its legal

²⁷ See Information Document CM/Inf/DH(2010)36.

²⁸ Secretariat Notes on the Agenda for 1475th meeting of the CM(DH) on 19-21 September 2023 (CM/Notes/1475/H46-37), 5 September 2023, p. 3; Information Document CM/Inf/DH(2010)36. These materials note that “several” of these delegations “declared that they support the position of the Secretariat”, but do not indicate how many of these delegations made such a declaration.

²⁹ Secretariat Notes on the Agenda for 1475th meeting of the CM(DH) on 19-21 September 2023 (CM/Notes/1475/H46-37), 5 September 2023, p. 3.

³⁰ See 2014 Judgment, § 61.

obligation under the above-mentioned provision, and that the supervision of the execution of the Court's judgments is the responsibility of the Committee of Ministers.³¹

20. Thereafter, the Court made the following remarks in paragraph 63 of the decision—which forms the primary subject-matter of this Opinion:

“The Court considers that it is not necessary to examine the question whether it has the competence under the Convention to make a ‘declaratory judgment’ in the manner requested by the applicant Government since it is clear that the respondent Government is, in any event, formally bound by the relevant terms of the main judgment. It is recalled in this connection that the Court has held that there had 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 (section III, point 4 of the operative part of the principal judgment). It thus falls to the Committee of Ministers to ensure that this holding which is binding in accordance with the Convention, and which has not yet been complied with, is given full effect by the respondent Government. Such compliance could not, in the Court’s opinion, be consistent with any possible permission, participation, acquiescence or otherwise complicity in any unlawful sale or exploitation of Greek Cypriot homes and property in the northern part of Cyprus. Furthermore the Court’s decision in the case of Demopoulos and Others, cited above, to the effect that cases presented by individuals concerning violation of property complaints were to be rejected for non-exhaustion of domestic remedies, cannot be considered, on its own, to dispose of the question of Turkey’s compliance with section III of the operative provisions of the principal judgment in the inter-State case.”³² (emphasis added)

21. In my view, it is necessary to immediately identify the conclusions that flow from the plain and express language of paragraph 63. First, the Court makes clear that the ‘holding’ in section III, point 4 of the operative part of the principal judgment, which relates to the continuing violation of Article 1 of Protocol No. 1, “has not yet been complied with”. Recall that this finding is made with full knowledge of the *Demopoulos* line of case-law, the inadmissibility decision having been delivered four years prior. I recognise that on one reading this conclusion may simply reflect the state of the execution process in the CM(DH) as having not been formally concluded when the Court rendered its judgment.

³¹ See 2014 Judgment, § 62.

³² 2014 Judgment, § 63.

However, it is quite unusual for the Court to conclusively take a firm position in this manner by stating explicitly that the respondent State has not complied with a prior Grand Chamber judgment in a highly important and complex case, considering that it falls to the Committee of Ministers to make such determinations under Article 46 of the Convention. Therefore, I find it quite difficult to read this in any other way than that the Court decided to opine, as clearly and unambiguously as possible, that at the point of delivery of the 2014 Judgment, the respondent State had not executed the 2001 Judgment on this point. Second, the Court preempts an understanding that “*such compliance*” could be “*consistent with any possible permission, participation, acquiescence or otherwise complicity in any unlawful sale or exploitation of Greek Cypriot homes and property in the northern part of Cyprus.*” This is very broad and it seems unequivocal language, which, I want to make clear, makes no reference to the 2005 Law. As this language of the paragraph has been the main source of debate in the CM(DH), I will discuss it in more detail below. Finally, paragraph 63 ends with a direct reference to *Demopoulos*, in line with the specific claim made by Cyprus before the Court, and explicitly excludes an understanding that *Demopoulos* can, “*on its own*”, be considered to dispose of the question of Türkiye’s compliance with the operative provision in question.

22. One could be tempted to conclude this Opinion at this point. Paragraph 63 seems crystal clear on its face. The Court simply did not accept in 2014 that the respondent State had complied with section III, point 4 of the operative part of the 2001 Judgment, *Demopoulos* notwithstanding. However, the above reasoning from the Court has led to an interpretative debate in the CM(DH), hindering the ability of the Committee to supervise its execution. I note in particular that in the Department of Execution of Judgments’ 2014 ‘Stock Taking Memorandum’, prepared by the Secretariat, it was suggested that, given that: “*Turkey has not yet complied with the conclusion of the principal judgment that there was a violation of the property rights of displaced Greek Cypriots [...], Turkey is [yet] to adopt additional measures concerning this part of the principal judgment. [...] In order to put an end to the practice called into question by the Court, it is necessary to identify clearly what is covered*

by the terms ‘unlawful sale or exploitation’ [at paragraph 63][...]”.³³ Indeed, the Secretariat regarded it “essential to decide upon that issue in order to be able to determine the additional measures that Turkey should adopt.”³⁴

23. In this respect, the Secretariat considered that there were two possible readings to the terms “unlawful sale or exploitation” as referenced in paragraph 63: (1) sales and exploitation which are not in conformity with the law applicable in the ‘TRNC’; or (2) all sale and exploitation made without the consent of the original Greek Cypriot owners.³⁵ As I will come to later in this Opinion, this is the crux of the interpretative question that might warrant referral to the Court under Article 46(3) of the Convention.
24. In the Secretariat’s view, the former interpretation—which it ultimately considered to be in conformity with the Grand Chamber’s findings in *Demopoulos*—meant that it is the sale and exploitation of property which is prohibited for sale or exploitation by the 2005 Law itself that was prohibited by the Court, “namely the properties which have been returned by the [IPC] to their Greek Cypriot owners. It is recalled in this respect that, according to the Turkish authorities, the sale and exploitation of properties which are subject to a request for restitution before this Commission are also prohibited by the regulations applicable in the “TRNC”.” As such, under this interpretation, “the Committee could ask the Turkish authorities to provide information on the existence of practice in this respect,

³³ *Stock-taking concerning the violations established by the Court in the case Cyprus against Turkey and analysis of the impact of the judgment of 12 May 2014 on the just satisfaction*, H/Exec (2014)8, 25 November 2014, paras 20, 22 (emphasis added).

³⁴ *Id.*

³⁵ *Id.* See also the Secretariat’s Notes on the Agenda for the 1302nd CM(DH) meeting of 5-7 December 2017, (CM/Notes/1302/H46-32) in which the two readings were also summarised as follows: (i) “a sale or exploitation which is unlawful because it has taken place without the consent of the Greek Cypriot owners”, in which case “the measures to be taken should aim at prohibiting the sale and exploitation without their consent of all their properties, situated in the north of Cyprus; or (ii) “as concerning “properties which have been returned to their owners or can still be returned to them according to the criteria announced in the 2005 Law”, in which case “the Committee could examine whether the two protective procedures integrated in the mechanism of the [IPC] could be considered as adequate and sufficient.”

and, if necessary, invite them to take measures without delay to put an end to such practice.”³⁶

25. On the other hand, according to the Secretariat, the latter interpretation propagated by Cyprus, meant that the measures that needed to be taken by Türkiye:

“should aim at prohibiting the transfers and exploitation of immovable properties belonging to displaced Greek Cypriots. As the Convention guarantees only individual rights, such prohibition would only make sense if it aims at preserving the possibility for restitution of those properties to their Greek Cypriot owners. Such interpretation of the judgment on the just satisfaction seems to be in contradiction with the Grand Chamber findings in its inadmissibility decision Demopoulos and Others of 1 March 2010 and that of the Chamber in the Meleagrou and Others decision of 2 April 2013.”³⁷

26. In this context, it is important to note the subsequent decisions from the Court following *Demopoulos*, including *Meleagrou and Others v. Turkey*, delivered on 2 April 2013, referred to above by the Secretariat, preceding the 2014 Judgment, in which the Court found that the applicants had not made proper use of the IPC for the purposes of the requirement to exhaust domestic remedies before applying to the Court, since they had submitted only claims for restitution but not for exchange or compensation.³⁸
27. In the same vein, after the 2014 Judgment, in an inadmissibility decision delivered on 26 October 2017 in the *Loizou* case, the Court similarly rejected claims related to the length of the proceedings before the IPC and the alleged delay in the payment of the compensation awarded by the IPC.³⁹ Likewise, in the judgment *Joannou v. Turkey* of 12 December 2017, whilst the Court found that the IPC did not act with coherence, diligence and appropriate expedition concerning the applicant’s specific compensation claim in that case, it also underlined that the possible difficulties arising in the processing of particular cases before

³⁶ *Stock-taking concerning the violations established by the Court in the case Cyprus against Turkey and analysis of the impact of the judgment of 12 May 2014 on the just satisfaction*, H/Exec (2014)8, 25 November 2014, para. 23.

³⁷ *Id.*, para. 24.

³⁸ *Meleagrou and Others v. Turkey*, no. 14434/09, §§ 15-16, 2 April 2013.

³⁹ *Loizou v Turkey*, no. 50646/15, 26 October 2017. Please note that I was the President of the Second Section that issued this decision.

the IPC did not call into doubt the findings in the *Demopoulos* decision, according to which that remedy is accessible and capable of efficiently delivering redress.⁴⁰

28. The above view was further cemented in the Secretariat's latest Note prepared for the 1475th meeting of the CM(DH) in September 2023, in which the Secretariat concluded as follows, after noting the information provided by Türkiye upon the CM(DH)'s requests since 2017, on the avenues available within the framework of the 2005 Law, to prevent the unlawful sale and exploitation of Greek Cypriot property:

*"In the Secretariat's view, this information provides the clarification requested by the Committee. In any event, it must be underlined that the Court has made a detailed and positive assessment of the powers of the IPC and its workload and resources, notably in the Demopoulos and Meleagrou decisions, and also in the more recent Joannou judgment, adopted in 2017, in which the Court makes no reference to its above statement in the Cyprus v. Turkey just satisfaction judgment, but instead reaffirms the effectiveness of the IPC remedy."*⁴¹

29. It therefore concluded that, "[i]n the light of the measures taken since 2005 for the execution of this part of the judgment and the latest information submitted by the Turkish authorities in reply to the Committee's decisions, the Deputies could consider closing their supervision of the issue of the home and property rights of Greek Cypriots."⁴²
30. Guided by the Secretariat's analysis, the delegates in the CM(DH) considered closure of supervision at this last meeting but no such decision has yet been adopted. However, I note that Cyprus has objected to the Secretariat's above analysis on numerous occasions, in particular on the following bases, arguing that: (i) it is "crystal clear" from the 2014 Judgment that the Court did not decide in *Demopoulos* that Türkiye's obligations under Article 46 to execute the 2001 Judgment had been fulfilled. Rather, full implementation of that judgment required the immediate cessation of the continuing unlawful disposal (including sale, lease, use or any other means of exploitation) of Greek Cypriot-owned land

⁴⁰ See §§ 81-86, 106. Please note that I was the President of the Chamber which delivered the judgment in this case.

⁴¹ Secretariat Notes on the Agenda for 1475th meeting of the CM(DH) on 19-21 September 2023 (CM/Notes/1475/H46-37), 5 September 2023, p. 8.

⁴² *Id.*

in the occupied areas of Cyprus; (ii) the CM(DH) has a duty to ensure the implementation of that primary obligation, which is central to the peaceful resolution of the Cyprus problem; (iii) the remedies provided by the IPC are inadequate even for their limited purpose of providing a remedy for Türkiye's violations; and (iv) Türkiye continues in its attempts to create an irreversible *de facto* situation permanently obstructing the return of Greek Cypriots to their properties in the occupied areas of Cyprus, while insisting that the Committee treat *Demopoulos* as providing the answer to its continuing violations, which the Court rejected in the 2014 Judgment.⁴³

31. Having identified this specific interpretative problem and its impact on the supervision of the 2001 Judgment's execution in its 2014 Stock Taking Memorandum, the Secretariat itself recognised the possibility of resorting to the Article 46(3) procedure as early as 2014: *"If it is not possible to take a decision, then the question of a request for interpretation under Article 46§3 of the Convention could arise."*⁴⁴ The Department of Execution of Judgments concluded in the same Memorandum that:

*"[a]s regards the order and the calendar for the examination of the three clusters of the principal judgment, if the Committee shares the Secretariat's conclusion on the need to settle first the question of the meaning and the scope of the term 'unlawful', including, if necessary, through a request for interpretation under Article 46§3, it could decide to resume the issue of the property rights of displaced persons in March 2015."*⁴⁵

⁴³ See, for example, Communication from Cyprus (11/09/2018) to the Secretariat (DH-DD(2018)873, 12 September 2018; Communication from Cyprus (24/05/2019) to the Secretariat (DH-DD(2019)602, 27 May 2019; Communication from Cyprus (07/09/2021) to the Secretariat (DH-DD(2021)886, 8 September 2021; Communication from Cyprus (23/08/2022) to the Secretariat (DH-DD (2022)875, 24 August 2022; Communication from Cyprus (07/07/2023) to the Secretariat (DH-DD (2023)833, 10 July 2023.

⁴⁴ *Stock-taking concerning the violations established by the Court in the case Cyprus against Turkey and analysis of the impact of the judgment of 12 May 2014 on the just satisfaction*, H/Exec (2014)8, 25 November 2014, paras 35-36.

⁴⁵ *Stock-taking concerning the violations established by the Court in the case Cyprus against Turkey and analysis of the impact of the judgment of 12 May 2014 on the just satisfaction*, H/Exec (2014)8, 25 November 2014, para. 37.

32. The same possibility was again noted in the latest September 2023 Notes of the Secretariat.⁴⁶
33. In light of all of the above, the current Opinion is sought by Cyprus given this state of affairs and in circumstances where Cyprus maintains its position that the ‘TRNC’ is continuing to sell to third parties and exploit Greek Cypriot property as part of a deliberate plan of expansion promoted by Türkiye to “Turkify” the occupied part of Cyprus against the terms of the 2001 Judgment.⁴⁷ In Cyprus’s view, it is therefore the continuing nature of the violations that merits a consideration of the need to seek clarification from the Court pursuant to the procedure under Article 46(3) of the Convention.
34. With this context, and as requested, I will now address the arguments for and against the differing interpretative views expressed above. I wish to, for the sake of context and transparency, make clear that I proceed on the basis that there is still a willingness in the CM(DH) to openly and honestly debate the issues in question so that clarity can be reached on the execution of the 2001 Judgment.

D. The Core Interpretative Issue

35. In the present Section, I will make some preliminary remarks on the essence of the interpretative issue arising from paragraph 63 of the 2014 Judgment with my initial conclusions before I address the position with respect to case-law of the ECtHR and principles of public international law and rules on State responsibility in the following section.
36. I wish to start by making clear that the two interpretative positions as to the scope, meaning and content of paragraph 63 of the 2014 Judgment convey different visions as to the ultimate responsibilities of the respondent State under the Convention and general principles of international law, which I will discuss further in Section E below. The

⁴⁶ Secretariat Notes on the Agenda for 1475th meeting of the CM(DH) on 19-21 September 2023 (CM/Notes/1475/H46-37), 5 September 2023, p.7.

⁴⁷ For further details, *see* the Memorandum by the Government of the Republic of Cyprus prepared ahead of the 1475th meeting of the CM(DH) on 19-21 September 2023 (DH-DD(2023)833), 10 July 2023.

Secretariat adopts, on the one hand, what might be considered a pragmatic view of the situation, considering that a political solution has not been reached on the issue of northern Cyprus for the last half century. On the other hand, Cyprus refers to the clear language of paragraph 63 of the 2014 Judgment and relies on fundamental principles of State responsibility and the spirit and aims of the Convention to assert its position that it is not justified to close the supervision of the execution of section III, point 4 of the operative provision of the 2001 Judgment. Both positions are to be respected, but they cannot be reconciled at this point. Hence, clarity is needed.

37. As outlined in Section C above, whilst the Secretariat appears to place specific emphasis on the interpretation of the terms “*any unlawful sale or exploitation*”, implying that they constitute the root cause of the alternative interpretations, in actual effect, the impasse seems to arise from a broader and more fundamental disagreement on interpretation. More specifically, the Secretariat’s views since *Demopoulos* (when read in their entirety) appear to be that the Court has made a detailed and positive assessment of the IPC mechanism and the 2005 Law, considering the IPC mechanism an effective, accessible domestic remedy capable of delivering redress to the victims of the violation so that no additional measures (protective or otherwise) appear necessary for the purposes of the 2001 Judgment’s execution. However, in reality, and on closer analysis, it is the Secretariat’s interpretation of paragraph 63 of the 2014 Judgment, rather than the paragraph itself, that gives rise to the interpretation problem that the Secretariat suggests. In other words, if one takes the Court’s position in *Demopoulos* (which has, as such, not been called into question in later decisions of the Court), to be as the Secretariat has interpreted it since 2010, it is only then that it becomes necessary to address the “interpretation” problem with respect to the terms “*any unlawful sale or exploitation*”. Just so I am clear, it is only then that one needs to reconcile the Secretariat’s interpretation of *Demopoulos* with the 2014 Judgment.
38. On the other hand, if one reads what the Court says plainly on its face in paragraph 63, as I have already begun to outline above, it is indeed possible to read the Court’s comments in that paragraph in line with its dicta in *Demopoulos* without the need to interpret the meaning of the terms “*any unlawful sale or exploitation*” in the way the Secretariat suggests. To illustrate, and taking again the reasoning in paragraph 63 in turn carefully,

firstly, the Court begins the paragraph by confirming that Türkiye is “*formally bound by the relevant terms of the main judgment*”, holding that the “*continuing violation of Article 1 Protocol 1*”, “*has not yet been complied with*” (emphasis added). It then confirms that: “*such compliance could not, in the Court’s opinion, be consistent with any possible permission, participation, acquiescence or otherwise complicity in any unlawful sale or exploitation of Greek Cypriot homes and property in the northern part of Cyprus.*” (emphasis added). With its choice of the word “any” twice, the Court uses the widest possible formulation of the scope of measures it considers would not be in compliance with its principal judgment to the extent they allow, enable or in any way facilitate an “*unlawful sale or exploitation.*”

39. In this regard, it is also informative to have regard to the Partly Concurring Opinion of Judges Tulkens, Vajić, Raimondi and Bianku, joined by Judge Karakaş, which I will also discuss further in a moment. In paragraph 4 of their Opinion, they refer to the above statement of the Court, which the Secretariat has subsequently relied upon, but say that, that statement, “*basically does no more than reiterate the dictum in the principal judgment on this issue.*” In fact, they continue, this statement “*does not give rise to any particular difficulties, although this repetition might be said to be entirely superfluous in the light of the purpose of the Article 41 judgment.*”⁴⁸ Again, this provides additional support to the view, submitted by Cyprus, that this statement cannot be interpreted to merely refer to “*sales and exploitation which are not in conformity with the law applicable in the ‘TRNC’*”, as discussed in *Demopoulos*, which is the position suggested by the Secretariat, as I have outlined above.
40. More importantly, the Court then clarifies in its final sentence that its decision in *Demopoulos*, which it considers to be the authority for the proposition that, “*cases presented by individuals concerning violation of property complaints [need] to be rejected for non-exhaustion of domestic remedies*”, “*cannot be considered, on its own, to dispose*

⁴⁸ 2014 Judgment, Partly Concurring Opinion of Judges Tulkens, Vajić, Raimondi, Bianku joined by Judge Karakaş, § 4.

of the question of Turkey's compliance with section III of the operative provisions of the principal judgment in the inter-State case.” (emphasis added).

41. Stated differently, and to recall my previous remarks, three conclusions follow from a plain reading of these specific comments on *Demopoulos*: (1) the Court clearly and still at that point considered that Section III, point 4 of the 2001 Judgment regarding continuing violation of Article 1 of Protocol 1 (in respect of access, control and use of property as well as compensation for interference with property rights) had not been complied with; (2) the Court understood *Demopoulos*' chief premise to be the need to reject property complaints for failure to exhaust domestic remedies—a view consistent with its findings that the IPC mechanism is in that sense an adequate remedy that had to be first resorted to—; and (3) on the basis of this dictum in *Demopoulos* on the exhaustion of domestic remedies, the Court confirmed that this cannot, *on its own*, be considered to have disposed of the question on Türkiye's ultimate compliance with the primary 2001 Judgment.
42. The above reading that the Court could not be taken to have absolved Türkiye of all responsibility with *Demopoulos* is further evident from the context in which the Court has ruled with respect to the IPC mechanism in *Demopoulos*. There, the Court was careful to set out the “context” of the issue as follows, before delivering its conclusions:

“The Court observes that the arguments of all the parties reflect the long-standing and intense political dispute between the Republic of Cyprus and Turkey concerning the future of the island of Cyprus and the resolution of the property question.

In the present applications, some thirty-five years have elapsed since the applicants lost possession of their property in northern Cyprus in 1974. Generations have passed. The local population has not remained static. Turkish Cypriots who inhabited the north have migrated elsewhere; Turkish Cypriot refugees from the south have settled in the north; Turkish settlers from Turkey have arrived in large numbers and established their homes. Much Greek Cypriot property has changed hands at least once, whether by sale, donation or inheritance.

Thus, the Court finds itself faced with cases burdened with a political, historical and factual complexity flowing from a problem that should have been resolved by all parties assuming full responsibility for finding a solution on a political level. This reality, as well as the passage of time and the continuing evolution of the broader political dispute must inform the Court's interpretation and application of

*the Convention which cannot, if it is to be coherent and meaningful, be either static or blind to concrete factual circumstances.”*⁴⁹

43. The factual circumstances in question in *Demopoulos* included properties that had changed hands, by gift, succession or otherwise after decades; or situations where those claiming title might have never seen, or ever used the properties in question, putting the reasonableness of the expectation of enjoying the full benefits of a title into question, and thereby rendering the losses thus claimed “*increasingly speculative and hypothetical*” in the Court’s view.⁵⁰
44. As a result, the Court made it clear that its conclusions regarding the IPC mechanism were made on the basis that “[a]n appropriate domestic body, with access to the properties, registries and records, is clearly the more appropriate forum for deciding on complex matters of property ownership and valuation and assessing financial compensation”.⁵¹ Moreover, the Court stated that:

*“In the Court’s view, the key consideration is to avoid a vacuum which operates to the detriment of those who live under the occupation, or those who, living outside, may claim to have been victims of infringements of their rights. **Pending resolution of the international dimensions of the situation**, the Court considers it of paramount importance that individuals continue to receive protection of their rights on the ground on a daily basis. The right of individual petition under the Convention is no substitute for a functioning judicial system and framework for the enforcement of criminal and civil law. Even if the applicants are not living as such under the control of the ‘TRNC’, the Court considers that, if there is an effective remedy available for their complaints provided under the auspices of the respondent Government, the rule of exhaustion applies under Article 35 § 1 of the Convention. As has been consistently emphasised, this conclusion does not in any way put in doubt the view adopted by the international community regarding the establishment of the ‘TRNC’ or the fact that **the government of the Republic of Cyprus remains the sole legitimate government of Cyprus** (see *Foka*, cited above, § 84). The Court maintains its opinion that allowing the respondent State to correct wrongs imputable to it does not amount to an indirect legitimisation of a regime unlawful under international law.”*⁵² (emphasis added)

⁴⁹ *Demopoulos*, §§ 83-85.

⁵⁰ *Demopoulos*, § 111.

⁵¹ *Id.*, § 97.

⁵² *Id.*, §§ 96-97.

45. More significantly, the Court expressed concern with the idea that it is only *restitutio in integrum* in its absolute sense that could vindicate the rights of the Greek Cypriots, the Court further opining as follows:

“The Court must also remark that some thirty-five years after the applicants, or their predecessors in title, left their property, it would risk being arbitrary and injudicious for it to attempt to impose an obligation on the respondent State to effect restitution in all cases, or even in all cases save those in which there is material impossibility, a suggested condition put forward by the applicants and intervening Government which discounts all legal and practical difficulties barring the permanent loss or destruction of the property. It cannot agree that the respondent State should be prohibited from taking into account other considerations, in particular the position of third parties. It cannot be within this Court’s task in interpreting and applying the provisions of the Convention to impose an unconditional obligation on a Government to embark on the forcible eviction and rehousing of potentially large numbers of men, women and children even with the aim of vindicating the rights of victims of violations of the Convention.”⁵³

46. In short, what is clear from the practical and, indeed, judicious, conclusions that the Court has reached in the face of a difficult political situation, is that its main focus was to ensure that those who already had victim status were restored to their previous position via the proposed mechanism. In that sense, the Court’s view that a domestic body, with access to the properties and relevant records, can be an effective remedy to decide on matters of property ownership and assessing financial compensation is understandable considering the circumstances.
47. But what the Court did not do in *Demopoulos* or its progeny, and I wish to make this clear, was to exonerate Türkiye wholesale with respect to continuing violations established in the 2001 Judgment going forward, nor to bless a scenario that would contradict the essence of that judgment in a way that allows other persons to continue to become victims of the same violations (as I explore further in the next section). Moreover, as the Court made clear in paragraph 63 of the 2014 Judgment, the IPC mechanism, *on its own*, was not considered to be sufficient to dispose of Türkiye’s compliance with the 2001 Judgment. In summary, although I appreciate the arguments for and against this interpretative outcome, when the

⁵³ *Id.*, § 116.

Court's findings in *Demopoulos* are read in light of its core premise as regards the rule on the exhaustion of domestic remedies,⁵⁴ it is, it seems to me, possible to reconcile the Court's position in the 2014 Judgment with its ruling in *Demopoulos*.

48. My reading above is also supported by the disagreement within the Court itself on the inclusion of the comment on *Demopoulos*' effect within paragraph 63. In the above mentioned, and in my view very relevant, Partly Concurring Opinion of Judges Tulkens, Vajić, Raimondi and Bianku, joined by Judge Karakaş, the judges criticized the inclusion of the statement as seeking "*to extend the powers of the Court and runs counter to Article 46(2) of the Convention by encroaching on the powers of the Committee of Ministers of the Council of Europe to which the Convention has entrusted the task of supervising execution of the Court's judgments.*"⁵⁵ Because in their opinion, "[t]he Court does not have jurisdiction to verify whether a Contracting Party has complied with the obligations imposed on it by one of the Court's judgments"⁵⁶, which is the prerogative of the Committee of Ministers. As such, the dissenters considered that it would only be via the procedures set out in Articles 46(3) and (4) of the Convention that the Court should be resorted to, based on a decision taken by the Committee of Ministers by a qualified majority of two thirds of the representatives, not by direct appeal of the High Contracting Parties. However, this was not the majority view, as espoused in paragraph 63 of the 2014 Judgment. Hence, the interpretative quandary now in issue.
49. With that, I now turn to elaborating further, as requested, on the reasons why I consider that the interpretation submitted by Cyprus is, on balance and after much consideration, to be preferred over that of the Secretariat's with respect to paragraph 63 of the 2014 Judgment and its nexus with *Demopoulos*, in light of existing case-law of the ECtHR,

⁵⁴ This rule emanates from Article 35 of the Convention which provides that: "1. *The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of four months from the date on which the final decision was taken[]*".

⁵⁵ 2014 Judgment, Partly Concurring Opinion of Judges Tulkens, Vajić, Raimondi, Bianku joined by Judge Karakaş, § 6.

⁵⁶ *Id.*, § 7.

jurisprudence under international human rights law and principles of public international law on State responsibility.

E. The Preferred Interpretation of Paragraph 63 of 2014 Judgment In Light of the Principal 2001 Judgment, the Case-Law of the ECtHR and Principles of International Law on State Responsibility

50. Having set out the essence of the interpretative dispute above, I will now further explain my view that the above conclusion, in line with Cyprus's approach, is the one that better accords with the core rationales of the 2001 and 2014 Judgments, established case-law of the Court and the principles of State responsibility under public international law.

51. As a starting point, I note that in accordance with the Court's established case-law, as reflected in the 2014 Judgment itself:

*“the provisions of the Convention cannot be interpreted and applied in a vacuum. Despite its specific character as a human rights instrument, the Convention is an international treaty to be interpreted in accordance with the relevant norms and principles of public international law and, in particular, in the light of the Vienna Convention on the Law of Treaties of 23 May 1969 (the ‘Vienna Convention’). As a matter of fact, the Court has never considered the provisions of the Convention as the sole framework of reference for the interpretation of the rights and freedoms enshrined therein. On the contrary, it must also take into account any relevant rules and principles of international law applicable in relations between the Contracting Parties.”*⁵⁷ (emphasis added)

52. In this respect, Article 31(1) of the Vienna Convention (“VCLT”) dictates an interpretation “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”, while Article 31(3)(c) of the VCLT confirms that together with context, any relevant rules of international law applicable in the relations between the parties shall also be taken into account when interpreting an international treaty's terms, just as the Convention.⁵⁸ Time and again, the Court has confirmed that it has an obligation to take account of the relevant rules and

⁵⁷ 2014 Judgment, § 23 citing *Loizidou v. Turkey* [GC], no. 15318/89, ECHR 1996-VI, § 43; *Al Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI; *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 150, ECHR 2005-VI; *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 67, ECHR 2008, and Article 31(c) of the Vienna Convention.

⁵⁸ See Vienna Convention on the Law of Treaties of 23 May 1969 (“VCLT”).

principles of international law⁵⁹ and to interpret the Convention as far as possible in harmony with other rules of international law of which it forms part.⁶⁰

53. One such rule, which is very important for present purposes, is embodied in Article 14(2) of the International Law Commission (“ILC”)’s Articles on State Responsibility—which represent the customary rules of international law as applicable to and between States⁶¹—and provides that: “*the breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.*”⁶² Thus, as long as the violation is of a continuing nature, it continues to engage State responsibility for the entire time it is in effect until ceased and even beyond a State’s national borders to the extent that the State exercises control of territory outside these borders. Citing the following quote from the judgment in *Loizidou v Turkey*, the Court indeed repeated the application of this rule within the Convention context in the 2001 Judgment as follows:

*“in conformity with the relevant principles of international law governing State responsibility, [...] the responsibility of a Contracting Party could also arise when as a consequence of military action—whether lawful or unlawful—it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration [...]”*⁶³

⁵⁹ Such rules come from several sources, three of which are identified in Article 38(1) of the Statute of the International Court of Justice as treaties, customary law and general principles.

⁶⁰ See *Jones and Other v United Kingdom*, nos. 34356/06 and 40525/06, § 195, ECHR 2014-I; *Catan and Others v Moldova and Russia*, [GC], nos. 43370/04, 8252/05 and 18454/06, § 136, ECHR 2012-V.

⁶¹ These articles, which codified the customary law on state responsibility, were adopted by the International Law Commission of the United Nations in 2001 after more than four decades of discussion.

⁶² Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, adopted by the International Law Commission, 2001, Article 14(2).

⁶³ 2001 Judgment, § 76 citing from § 52 of *Loizidou v. Turkey* [GC], no. 15318/89, ECHR 1996-VI.

54. It therefore concluded that Türkiye's obligations owed under the Convention did extend to the occupied area in Cyprus for as long as the occupation continued and to those whose rights have been infringed due to the occupation.
55. Relatedly, for continuing violations, Article 30 of the ILC Articles provides that, "[t]he State responsible for the internationally wrongful act is under an obligation: (a) to cease that act, if it is continuing; (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require."⁶⁴ The Commentary to Article 30 at paragraph (4) further clarifies that, "[c]essation of conduct in breach of an international obligation is the first requirement in eliminating the consequences of wrongful conduct. With reparation, it is one of the two general consequences of an internationally wrongful act."⁶⁵ Paragraph (7) of the Commentary then reiterates that whilst "[t]he question of cessation often arises in close connection with that of reparation, and particularly restitution, [...], the two must be distinguished. [Cessation] may give rise to a continuing obligation, even when literal return to the status quo ante is excluded or can only be achieved in an approximate way."⁶⁶ (emphasis added).
55. This important principle of customary international law on continuing violations reflected in Article 30 of the ILC Articles has also been the touchstone for the obligation enshrined in Article 46 of the Convention with respect to compliance with the Court's judgments.⁶⁷

⁶⁴ Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, adopted by the International Law Commission, 2001, Article 30.

⁶⁵ See Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, adopted by the International Law Commission, 2001, para. 7 of Commentary to Article 30. *See also* ICJ's Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, (ICJ Reports 2004, p. 136, para.s 150-151), in which the Court considered the obligation of cessation holistically in concluding that it entailed a duty to take measures to remove all negative consequences of unlawful conduct.

⁶⁶ Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, adopted by the International Law Commission, 2001, para. 7 of Commentary to Article 30.

⁶⁷ See para. 28 of the Guide on Article 46 of the Convention published by the Court (last updated 31 December 2020), which provides that: "*The execution process concerns compliance by a Contracting Party with its obligations in international law under Article 46 § 1 of the Convention. Those obligations are based on the principles of international law relating to cessation, non-repetition and reparation as reflected in the [ILC Articles]. They have been applied over the years by the Committee of Ministers and currently find expression in Rule 6.2 of the Rules of the Committee of Ministers (Ilgar Mammadov v. Azerbaijan [GC], 2019, §§ 161-162).*" (emphasis added). Available at: https://www.echr.coe.int/documents/d/echr/Guide_Art_46_ENG.

Under Article 46, the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties, and when the Court finds a breach, such a finding imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (otherwise known as the principle of *restitutio in integrum*).⁶⁸ The relevant State party must bear in mind the primary aim of achieving *restitutio in integrum* as was further confirmed by the landmark Grand Chamber judgment in the case of *Mammadov v Azerbaijan*, (Article 46(4) infringement proceedings), in the context of the respondent State's exercise of its discretion as to the choice of individual measures to remedy a violation under Article 46.⁶⁹

56. In *Mammadov*, the Grand Chamber set out the “*legal framework for the execution process*” of its judgments under Article 46 and explained its nexus with the “*principles of international law relating to cessation, non-repetition and reparation as reflected in the [ILC Articles]*” as follows:

“According to the Court’s established case-law the execution process concerns compliance by a Contracting Party with its obligations in international law under Article 46 § 1 of the Convention. Those obligations are based on the principles of international law relating to cessation, non-repetition and reparation as reflected in the [ILC Articles] [...]. They have been applied over the years by the Committee of Ministers and currently find expression in Rule 6.2 of the Rules of the Committee of Ministers [...].

Accordingly, the supervision mechanism now established under Article 46 of the Convention provides a comprehensive framework for the execution of the Court’s judgments, reinforced by the Committee of Ministers’ practice. Within that framework the Committee’s continuous supervision work has generated a corpus of public documents encompassing information submitted by respondent States and others concerned by the execution process, and recording decisions taken by the

⁶⁸ *Case of Papamichalopoulos and Others v. Greece*, no. 14556/89, § 34, ECHR 1995, Series A no. 330-B.

⁶⁹ *Mammadov v Azerbaijan* [GC], no. 15172/13, § 150, ECHR 2019, citing *Kudeshkina v. Russia* (No.2) (dec.), no. 28727/11, § 74, 17 February 2015 and *Papamichalopoulos and Others v. Greece*, § 34. Please note that I was a member of the Grand Chamber which delivered the judgment in *Mammadov* (Article 46(4) infringement proceedings). See also Recommendation No R (2000) 2 of the Council of Europe, Parliamentary Assembly, adopted by the Committee of Ministers on 19 January 2000, insisting that the execution of a judgment should bring about *restitutio in integrum* to the extent that this is at all possible. Available at: <<https://rm.coe.int/16805e2f06>>.

*Committee in cases pending execution. That practice has also influenced general standard setting in the Committee's Recommendations to the Member States on topics relevant to execution issues (for example Recommendation R (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights or Recommendation CM/Rec(2010)3 on effective remedies for excessive length of proceedings). The result is that the Committee of Ministers has developed an extensive *acquis*.*

*With this in mind, the Court notes that it has previously held that Article 41 is a *lex specialis* in relation to the general rules and principles of international law, whilst also concluding that this provision should be interpreted in harmony with international law (see *Cyprus v. Turkey* (just satisfaction), cited above, §§ 40-42). **Having regard to its conclusions above concerning the legal framework for the execution process and the Committee of Ministers' *acquis*, it will adopt a similar approach in the present context and consider Rule 6 of the Committee's rules to reflect the principles of international law set out in the [ILC Articles].**"⁷⁰ (emphasis added)*

57. In the context of an inter-State case, the Court had also relied on similar arguments in the Article 41 judgment in *Georgia v Russia* (I), recognizing the direct link between the State's obligations to cease the internationally wrongful act and to make full reparation (which, as the *Mammadov* judgment later recognised, is required under Article 46), and the Court's power to order just satisfaction under Article 41 (i.e. to the extent the internal law of the respondent State only offers partial reparation). The Grand Chamber held that:

"[...] the general logic of the just-satisfaction rule is directly derived from the principles of public international law relating to State liability [...]. Those principles include both the obligation on the State responsible for the internationally wrongful act 'to cease that act, if it is continuing' and the obligation to 'make full reparation for the injury caused by the internationally wrongful act', as laid down in Articles 30 and 31 respectively of the Articles on Responsibility of States for Internationally Wrongful Acts [...]"⁷¹ (emphasis added)

58. In a similar vein, the Parliamentary Assembly of the Council of Europe, in a recent report on implementation of judgments, confirmed this well-known understanding of the obligations under Article 46, as follows: "*the implementation of a Court judgment, required by Article 46 paragraph 1 of the Convention, may require not only the payment*

⁷⁰ *Mammadov v Azerbaijan* [GC], no. 15172/13, §§ 162-164, ECHR 2019.

⁷¹ *Georgia v Russia* (I) (just satisfaction) [GC], no. 13255/07, § 54, 31 January 2019.

of just satisfaction awarded by the Court, but also the adoption of other individual measures (aimed at the cessation of the violation of the Convention and the restitutio in integrum for applicants) and/or general measures (aimed at preventing repeated violations of the Convention).’’⁷²

59. Likewise, in recognition of the relevance of the principles found in Article 30 of the ILC Articles, the Court (First Section) recently observed in *Smiljanic v Croatia* that:

*“Under Article 30 of the Articles on Responsibility of States for Internationally Wrongful Acts (referred to, inter alia, in Ilgar Mammadov v. Azerbaijan (infringement proceedings) [GC], no. 15172/13, 29 May 2019, § 84 and also § 162), a State responsible for an internationally wrongful act is under an obligation to cease that act, if it is continuing, and to offer appropriate assurances and guarantees of non-repetition, if the circumstances so require. Rule 6 § 2 (b) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements requires the Committee of Ministers to examine – inter alia – **whether individual measures have been taken to ensure that the violation has ceased and whether general measures have been adopted preventing new violations similar to that or those found or putting an end to continuing violations.**’’⁷³ (emphasis added)*

60. The Rules of the Committee of Ministers, as referred in the above judgment of *Mammadov* and in *Smiljanic*, are of particular relevance. According to Rule 6(2)(b) of the Rules of the Committee of Ministers:

“When supervising the execution of a judgment by the High Contracting Party concerned, pursuant to Article 46, paragraph 2, of the Convention, the Committee of Ministers shall examine: [...]

b.) if required, and taking into account the discretion of the High Contracting Party concerned to choose the means necessary to comply with the judgment, whether:

i. individual measures have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention;

⁷² Committee on Legal Affairs and Human Rights, Implementation of the judgments of the European Court of Human Rights: 11th report, 2023 available at: <[⁷³ Case of *Smiljanic v Croatia*, no. 35983/14, § 7, 25 March 2021 \(Final 25 June 2021\).](https://rm.coe.int/implementation-of-the-judgments-of-the-european-court-of-human-rights-/1680aaaa60#:~:text=a%20Court%20judgment%2C%20required%20by,for%20applicants)%20and%20For%20general>.”</p></div><div data-bbox=)

ii. general measures have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations.”⁷⁴

61. What flows from all of the above and the Court’s established case-law, interpreted in accordance with the principles of public international law discussed, is that there are several limbs to State responsibility as regards continuing violations, which are conceptually separate from one another. These are: (1) an obligation to cease the violation and comply with the primary obligation;⁷⁵ (2) an obligation of reparation to put the injured party, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention; and, to the extent necessary; and (3) an obligation to adopt measures preventing new violations similar to those found or putting an end to the continuing violations. In that respect, one can also observe that the rule in Article 46 has a double aim and dimension; one seeking to correct the past wrongs via cessation and reparation for the individuals affected, whilst at the same time aiming to prevent future violations.
62. For that reason, and recognising these multiple facets of responsibility, in *Andersen v Denmark*, and *Frederiksen v Denmark*, the former European Human Rights Commission held as early as 1987 that:

“The obligation to provide a remedy does not constitute a substitute for, or an alternative to, compliance with other convention obligations. It is rather a means of redress within the domestic system for violations which occur despite measures taken to ensure compliance with the substantive provisions of the convention. Thus if conduct which contravened the Convention were to be authorised by domestic law the State could not escape from its obligations merely by paying compensation. The compensation machinery could only be seen as an adequate remedy in a situation where the authorities had taken reasonable steps to comply

⁷⁴ See Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements (adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers’ Deputies and amended on 18 January 2017 at the 1275th meeting of the Ministers’ Deputies).

⁷⁵ The obligation of a State responsible for an internationally wrongful act to put an end to that act is well established in general international law, and the ICJ has on a number of occasions confirmed the existence of that obligation. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, ICJ Reports 1986, p. 145; *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgment, ICJ Reports 1980, p. 44, para. 95; *Haya de la Torre (Colombia v. Peru)*, Judgment, ICJ Reports 1951, p. 82.

*with their obligations under the Convention by preventing as far as possible the occurrences or repetition of the acts in question.*⁷⁶ (emphasis added)

63. This approach has been repeatedly confirmed by the Court in subsequent case-law, in different contexts. For example, in the Grand Chamber judgment in *Scozzari and Giunta v. Italy*, which concerned a continuing situation under Article 8 of the Convention (right to respect for family life), the Court reiterated that:

*“a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see, mutatis mutandis, the Papamichalopoulos and Others v. Greece (Article 50) judgment of 31 October 1995, Series A no. 330-B, pp. 58-59, § 34). Furthermore, subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment. [...] Accordingly, under Article 41 of the Convention the purpose of awarding sums by way of just satisfaction is to provide reparation solely for damage suffered by those concerned to the extent that such events constitute a consequence of the violation that cannot otherwise be remedied.”*⁷⁷ (emphasis added)

64. In other words, it was made clear that the means chosen by the offending State to remedy a violation as per Article 46 could not simply be reduced to compensation, but in essence, must be compatible with the conclusions set out in the Court's judgment.⁷⁸
65. The same principle was reiterated more recently by the Grand Chamber in its *Ukraine v. Russia (re Crimea)* judgment issued on 25 June 2024, when addressing the continuing situation under in particular Article 18 (limitation on use of restrictions on rights permitted

⁷⁶ *Andersen v Denmark*, no. 12860/87 and *Frederiksen and Others v. Denmark*, no. 12719/87, Commission decisions of 3 May 1988.

⁷⁷ See *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII.

⁷⁸ See also *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I; *Akdivar and Others v. Turkey* (Article 50) [GC], § 47, ECHR 1998-II; and *Marckx v. Belgium* (Plenary), judgment of 13 June 1979, Series A no. 31, p. 25, § 58, confirming the same principle.

under the Convention) in conjunction with Article 8 (right to respect for family life) of the Convention, as follows:

*“Concerning the measures to be adopted by the respondent State, subject to supervision by the Committee of Ministers, to put an end to the violations found, the Court reiterates that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose the means to be used in its domestic legal order to discharge its legal obligation under Article 46 of the Convention, **provided that such means are compatible with the conclusions and the spirit of its judgment.** This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the respondent States under the Convention to secure the rights and freedoms guaranteed (see, *inter alia*, *Kurić and Others v. Slovenia (just satisfaction)* [GC], no. 26828/06, § 80, ECHR 2014).”⁷⁹ (emphasis added)*

66. All of the above allows me to reach the following conclusion as regards the main subject-matter of this Opinion: A reading of *Demopoulos* to the effect that a domestic compensation and redress mechanism—embodied in the IPC—is itself sufficient, so that no further measures from Türkiye are required, resulting in the closure of supervision of execution on that basis alone, would not sit well with the general principles of public international law which lie at the heart of the requirements of Article 46 of the Convention itself and the above jurisprudence. As canvassed above, reparation to remedy a violation is only one of the requirements of State responsibility. Undoubtedly, the other requirements to cease and prevent repetition of an unlawful act so as not to create new victims still stand independent of the State’s duty to compensate. This holds true even in circumstances “*when literal return to status quo ante is excluded or can only be achieved in an approximate way*”, in the words of the ILC Articles.⁸⁰
67. Were it not the case, States would be at liberty to continue with wrongful conduct safe in the knowledge that no international responsibility would ensue as long as they paid for it. The fact that a responsible State provides a mechanism for reparation for the benefit of already existing victims does not, in my view, give such State a *carte blanche* to act in a

⁷⁹ *Ukraine v Russia (re Crimea)* (judgment) [GC], nos. 20958/14 and 38334/18, § 1384 (25 June 2024).

⁸⁰ See Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, adopted by the International Law Commission, 2001, Article 30, para. 7.

way that creates new victims going forward. The need to “*abide by the conclusions and the spirit of the Court judgment being executed*” has been a long-standing and well-recognised principle by the Court.⁸¹

68. My above conclusions further flow from and are reinforced by States’ separate obligation under international law not to aggravate a dispute, or act in a way that would prejudice its peaceful resolution. This emanates from Article 2(3) of the UN Charter and the 1982 Manila Declaration of the UN General Assembly requiring States to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered and the peaceful settlement of the dispute is not made more difficult or impeded.⁸² The Permanent Court of Justice confirmed this duty of non-aggravation long ago in its decision in *Electricity Company of Sofia v Bulgaria* by stating that the parties to a case must abstain from “*any measure capable of exercising a prejudicial effect in regard to the execution of the decision [...] and, in general, not allow any step of any kind to be taken which might aggravate or extend the dispute.*”⁸³
69. For that reason, it is my view that, since at least *Demopoulos*, to the extent Greek Cypriot property is being sold, transferred or exploited with the intention to vest new rights in third parties, it is a justified concern espoused by Cyprus that the ‘TRNC’ is facilitating the creation of a *de facto* situation and conditions which render restitution of property to Greek Cypriot owners permanently impossible. Regardless of the assurances given by the ‘TRNC’ with respect to how the 2005 Law is formally meant to prevent disposal of property capable of restitution, to the extent that a practice continues of third party transfers, this state of affairs is liable to create new victims with only one recourse left available to them before the IPC. Thereby, as long as this alleged practice encouraging third party transfers and development of land continues, it is not unjustified to conclude that a *fait accompli* is seemingly being engineered, resulting in an irreversible state of

⁸¹ *Verein Gegen Tierfabriken Schweiz (VgT) v. Switzerland* (no. 2) [GC], no. 32772/02, § 90, ECHR 2009-IV.

⁸² UN General Assembly Res. 37/10, 15 November 1982, para. 8.

⁸³ *Electricity Company of Sofia and Bulgaria*, Order, 5 December 1939, 1939 PCIJ Ser. A/B, No. 79, at 194, 199 (emphasis added).

affairs for the Greek Cypriots. This, in turn, has an undeniable prejudicial effect on the execution of the 2001 Judgment as well as having the effect of impeding and/or making difficult the ultimate settlement of the dispute between Cyprus and Türkiye. After all, property restitution is an important tool for restorative justice⁸⁴ and any measure that permanently and *de facto* removes the possibility of employing this tool is undoubtedly not going to assist with building trust between the negotiating parties and will further prejudice political negotiations.⁸⁵

70. Moreover, I note that a reading of *Demopoulos* as allowing for the future permanent denial of the right to property and return to one's home for displaced Greek Cypriots would be liable to contravene the 1998 UN Guiding Principles on Internal Displacement,⁸⁶ and Principles on Housing and Property Restitution for Refugees and Displaced Persons (the "**Pinheiro Principles**").⁸⁷ Although both are not legally binding, they constitute

⁸⁴ This was correctly noted by Judge Ziemele in *Sargsyan*, when she argued that remedying the displaced people could "*be a way of moving towards finding a solution to the conflict*", *Sargsyan v. Azerbaijan* [GC], no. 40167/06, ECHR 2015-VIII, Concurring Opinion of Judge Ziemele, § 7.

⁸⁵ Although dealing with a completely different factual premise, the ICJ has previously condemned *de facto* State practices in its 2004 Advisory Opinion concerning the construction of the wall and its associated régime by Israel in the Palestinian territory, which the ICJ considered created a "*fait accompli*" on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation: See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I. C. J. Reports 2004, p. 136, para. 121.

⁸⁶ Which define 'internally displaced persons' as "*persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.*" See UN Commission on Human Rights, 11 February 1998, E/CN.4/1998/53/Add.2, Principle 21 of the 1998 Guiding Principles, which protects internally displaced persons against arbitrary deprivation of property and possessions. Significantly, Principle 29 stipulates that competent authorities must facilitate the return of internally displaced persons and the recovery of their property.

⁸⁷ Housing and property restitution in the context of the return of refugees and internally displaced persons, Final report of the Special Rapporteur Paulo Sergio Pinheiro, submitted in accordance with Sub Commission resolution 2004/2, 28 June 2005, E/CN.4/Sub. 2/2005/17. Principle 21 provides as follows: "*All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation. [...] States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the*

authoritative instruments reflecting key international standards on displacement and the principles of international human rights and humanitarian law.⁸⁸ I observe that the Parliamentary Assembly of the Council of Europe adopts this view as confirmed in its Resolution 1708 (2010) on solving property issues of refugees and displaced persons⁸⁹ calling on member States to:

*“ensure that redress takes the form of restitution in the form of confirmation of the legal rights of refugees and displaced persons to their property and restoration of their safe physical access to, and possession of, such property. Where restitution is not possible, adequate compensation must be provided, through the confirmation of prior legal rights to property and the provision of money or goods having a reasonable relationship to their market value, or other forms of just reparation.”*⁹⁰

71. Referring to the above Resolution, the Court confirmed in the Grand Chamber judgment in *Chiragov v Armenia* that these principles do represent the “most complete standards on the issue.”⁹¹
72. In conclusion, it is my view, after weighing all of the competing considerations and fully recognising the arguments of both the Secretariat of the CM(DH) and Cyprus, that the better understanding of paragraph 63 of the 2014 Judgment is that the Grand Chamber refused to confirm that the decision in *Demopoulos* (and its progeny) had resulted in Türkiye having fully executed section III, point 4 of the operative provision of the 2001 Judgment, in the light of the core rationale of the 2001 Judgment, other case-law of the

option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.” Available at: <https://www.ohchr.org › pinheiro_principles>.

⁸⁸ See UN Human Rights Office of the High Commissioner Special Rapporteur remarks. Available at: <<https://www.ohchr.org/en/special-procedures/sr-internally-displaced-persons/about-internally-displaced-persons>>.

⁸⁹ Council of Europe: Parliamentary Assembly, Resolution 1708 (2010): Solving property issues of refugees and displaced persons, 28 January 2010. available at: <<https://pace.coe.int/en/files/17814/html>>.

⁹⁰ See, *id.*

⁹¹ See, in particular, § 98 of that judgment in which the Court noted in its description of relevant United Nations and Council of Europe materials that the “*Pinheiro Principles, are the most complete standards on the issue. The aim of these principles, which are grounded within existing international human rights and humanitarian law, is to provide international standards and practical guidelines to States, UN agencies and the broader international community on how best to address the complex legal and technical issues surrounding housing and property restitution.*” *Chiragov and Others v Armenia* [GC], no. 13216/05, § 98, ECHR 2015-III.

Court, and taking account of general principles of international law on State responsibility. Therefore, I caution against the view that it can be considered justified to now close the execution of this part of the process by proceeding on the basis that the 2014 Judgment can be understood to mean that Türkiye does not have to take any further measures to comply with the 2001 Judgment with respect to the continuing violations creating new victims for the same wrong admonished by the Court.

73. However, it is clear that, whatever my independent views on this issue, which I have attempted to explain as comprehensively, objectively and exhaustively as my knowledge and experience permits, it can only be the Court that conclusively resolves the impasse at the CM(DH) as to the meaning of paragraph 63 of the 2014 Judgment and its nexus with *Demopoulos* for the purposes of execution of the 2001 Judgment. Therefore, as I will now explain in the next Section, there seem to be strong grounds that militate in favour of triggering the procedure under Article 46(3) of the Convention.

F. Whether the Dispute on the Interpretation of Paragraph 63 Is An Appropriate and/or Proper Question For a Referral to the Court under the Article 46(3) Procedure

74. Article 46(3) of the ECHR provides that:

*“If the Committee of Ministers considers that the **supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment**, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two-thirds of the representatives entitled to sit on the committee.”* (emphasis added)

75. Article 46(3) was introduced by Protocol 14, which entered into force on 1 June 2010, as part of efforts to “*strengthen the tools given to the COM to ensure rapid and full execution*

of the Court's judgments".⁹² The power granted to the Committee of Ministers under Article 46(3) applies to all cases pending before the Committee as of 1 June 2010.⁹³

76. The contemporaneous explanatory material to Protocol 14 makes clear that Article 46(3) was intended to be used sparingly in order "*to enable the Court to give an interpretation of a judgment, not to pronounce on the measures taken by a High Contracting Party to comply with that judgment.*" It states that:

*"[...]The Committee of Ministers' experience of supervising the execution of judgments shows that difficulties are sometimes encountered due to disagreement as to the interpretation of judgments. **The Court's reply settles any argument concerning a judgment's exact meaning.** The qualified majority vote required by the last sentence of paragraph 3 shows that the Committee of Ministers should use this possibility sparingly, to avoid overburdening the Court.*

*The aim of the new paragraph 3 is to enable the Court to give an interpretation of a judgment, not to pronounce on the measures taken by a High Contracting Party to comply with that judgment. No time-limit has been set for making requests for interpretation, since a question of interpretation may arise at any time during the Committee of Ministers' examination of the execution of a judgment. The Court is free to decide on the manner and form in which it wishes to reply to the request. Normally, it would be for the formation of the Court which delivered the original judgment to rule on the question of interpretation. More detailed rules governing this new procedure may be included in the Rules of Court."*⁹⁴ (emphasis added)

77. It is clear from the language of Article 46(3) and the above explanatory remarks that a referral request for interpretation must only be concerned with the interpretation of a "*judgment's exact meaning*" which hinders the supervision of execution but should not otherwise comment on a particular State's compliance with a judgment, as also noted by

⁹² Council of Europe, Information document prepared by the Department for the Execution of Judgments of the European Court of Human Rights – DG-HL, Entry into force of Protocol No. 14: consequences for the supervision of the execution of judgments of the European Court by the Committee of Ministers, 18 May 2010, paras. 1 and 8, available at: <<https://rm.coe.int/168059ac93>>.

⁹³ Protocol 14, Article 20(1); Council of Europe, Information document prepared by the Department for the Execution of Judgments of the European Court of Human Rights – DG-HL, Entry into force of Protocol No. 14: consequences for the supervision of the execution of judgments of the European Court by the Committee of Ministers, 18 May 2010, para. 11. Available at: <<https://rm.coe.int/168059ac93>>.

⁹⁴ Explanatory Report to Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, CETS 194, paras 96-97. Available at: <https://rm.coe.int/16800d380f>.

Judges Tulkens, Vajić, Raimondi and Bianku, joined by Judge Karakaş in their partly concurring opinion to the 2014 Judgment, where they noted that: “[t]he Court does not have jurisdiction to verify whether a Contracting Party has complied with the obligations imposed on it by one of the Court’s judgments [...]”.⁹⁵

78. Moreover, proceedings under Article 46(3) are further addressed in current Rules 96, 97 and 98 of the Rules of Court. Rule 96 describes the process which the Committee of Ministers shall follow for requests for interpretation, and, importantly, highlights that the mechanism applies directly to difficulties in execution of judgments:

“Any request for interpretation under Article 46 § 3 of the Convention shall be filed with the Registrar. The request shall state fully and precisely the nature and source of the question of interpretation that has hindered execution of the judgment mentioned in the request and shall be accompanied by

(a) information about the execution proceedings, if any, before the Committee of Ministers in respect of the judgment;

(b) a copy of the decision referred to in Article 46 § 3 of the Convention;

(c) the name and address of the person or persons appointed by the Committee of Ministers to give the Court any explanations which it may require.” (emphasis added).

79. Rule 97 further provides that “[t]he request shall be examined by the Grand Chamber, Chamber or Committee which rendered the judgment in question” (and, where that is not possible, the President of the Court shall draw lots to complete or compose the original body). This reference back to the original decision-making body highlights that Rule 46(3) targets a question of interpretation of the judgment in question and is not, for example, an opportunity to expand on or add new aspects to the scope of that judgment.

80. Rule 98 then emphasises the finality of any decision of the Court pursuant to Article 46(3) and provides that the Committee of Ministers will receive a copy of the ruling, stressing one more time that the mechanism is designed with issues of interpretation which hinder execution in mind:

⁹⁵ 2014 Judgment, §§ 7-9.

“The decision of the Court on the question of interpretation referred to it by the Committee of Ministers is final. No separate opinion of the judges may be delivered thereto. Copies of the ruling shall be transmitted to the Committee of Ministers and to the parties concerned as well as to any third party, including the Council of Europe Commissioner for Human Rights.”

81. As far as I am aware, this tool has not been resorted to as yet.⁹⁶ As such, although there is no direct jurisprudential guidance, there is some guidance in the Committee of Minister’s 2010 Annual Report which describes Article 46(3), together with the ability under Article 46(4) to engage infringement proceedings, as being *“part of the means at the Committee of Ministers’ disposal to support execution, it being clear, however that they should be used only in very exceptional circumstances”*.⁹⁷ The Parliamentary Assembly of the Council of Europe’s Recommendation from 2021 further indicates that the procedures in Article 46 can be employed *“in the event of the implementation of a judgment encountering strong resistance from the respondent State”*.⁹⁸
82. Finally, I note that the mechanism envisaged in Article 46(3) of the Convention is, as such, not inconsistent with the practice of other international human rights tribunals when

⁹⁶ Schabas, William A., *The European Convention on Human Rights*, Article 46. Binding force and execution of judgments, p. 872 (noting that “[t]his provision has not yet been invoked by the Committee of Ministers”).

⁹⁷ Council of Europe, *Supervision of the execution of judgments of the European Court of Human Rights: Annual report 2010*, April 2011, para. 36. Available at: <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680592ac6>>.

⁹⁸ The implementation of judgments of the European Court of Human Rights, Recommendation 2193(2021), para. 2.2, Text adopted by the Assembly on 26 January 2021 (3rd Sitting). Available at: <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=28997>>. Some further limited guidance on the Court’s approach to requests for interpretation may perhaps generally be drawn from the jurisprudence applying former Rule 57 of the earlier iteration of the Rules of Court, which provided that “[a] Party or the Commission may request the interpretation of a judgment” within three years of delivery. The current rule is found in Rule 79 of the Rules of Court which, due to the Commission’s abolition with Protocol No. 11, is limited to a party’s request for interpretation of a judgment within one year of its delivery, see paragraph 1. As to the old Rule 57, see e.g. *Allenet de Ribemont v. France* (interpretation), 7 August 1996, § 22, Reports of Judgments and Decisions 1996-III (rejecting a request for interpretation on whether it was “to be understood that Article 50 of the Convention (art. 50), which provides for an award of just satisfaction to the injured party [...], means that any sum awarded under this head must be paid to the injured party personally and be exempt from attachment”). See, also, *Heinrich v France*, the Court declined to grant a request for interpretation concerning whether an applicant was entitled to interest on compensation ordered pursuant to a judgment of just satisfaction, on the basis that the Court had expressly ordered that interest was payable on costs and expenses, and that it was for the COM to supervise execution of the judgment, *Hentrich v France* (Interpretation), 3 July 1997, Reports of Judgments and Decisions 1997-IV. Finally, I caution against drawing any meaningful conclusions as to the scope

determining whether to grant a request for interpretation of a judgment, (including that of the African Court of Human Rights, which also allows requests for interpretation “*for the purpose of execution*”), although Article 46(3) is unique in permitting referrals by a body such as the Committee of Ministers.⁹⁹

83. Taking account of the interpretive issues, as I explained them in Section D above, it seems clear that the supervision of the execution of the 2001 Judgment is hindered by a problem of interpretation emanating from paragraph 63 of the 2014 Judgment. The strong views expressed by Cyprus, on the one hand, and the Secretariat’s interpretation of the 2014 Judgment, on the other, and the ensuing debate on whether the circumstances justify the closure of supervision of the cluster of property cases under the 2001 Judgment, is further evidence of the existence of a hinderance of the kind envisaged in Article 46(3), which only the Court can definitively resolve.
84. In this regard, a request to resolve the interpretive dispute in the CM(DH), arising from the specific language in paragraph 63, seems to be in conformity with the language and purpose of Article 46(3) of the Convention, the explanatory remarks and current Rule 96 of the Rules of Court. Moreover, it is axiomatic in my view that it is highly unlikely that a ruling on interpretation in the particular circumstances of this case would create a substantial risk

and content of Article 46(3) of the Convention from the recent practice of the Court in providing Advisory Opinions under Protocol No. 16 to the Convention, see currently Chapter X of the Rules of Court.

⁹⁹ For example, Rule 77 of the Rules of Court of the African Court of Human and People’s Rights, 1 September 2020, provides that “*any party may, for the purpose of executing a judgment, apply to the Court for an interpretation of the judgment [...], unless the Court, in the interests of justice, decides otherwise*” and requires the applicant to “*state the point(s) in the operative provisions of the judgment on which interpretation is sought.*” In order to be admissible under this provision, the African Court’s jurisprudence makes clear that the interpretation request must: (i) have the objective of facilitating implementation of the judgment; and (ii) specify the points of the operative provisions of the judgment of which interpretation is requested, and be intended to clarify the meaning of these points. See *Actions pour la Protection des Droits de l’Homme (APDH) v Republic of Côte d’Ivoire*, Application No. 003/2017 for Interpretation of the Judgment of 18 November 2016, Judgment, 28 September 2017, para 13(c); *Actions pour la Protection des Droits de l’Homme (APDH) v Republic of Côte d’Ivoire*, Application No. 003/2017 for Interpretation of the Judgment of 18 November 2016, Judgment, 28 September 2017, paras 15-16; *Urban Mkandawire v Republic of Malawi*, Application No. 003/2011, Ruling, 28 March 2014, para 7.

of overburdening the Court by opening the floodgates to further requests for interpretation, given its unique circumstances.

85. In addition, and very importantly, I recall that having identified this specific interpretative problem and its impact on the supervision of the judgment's execution in its 2014 Stock Taking Memorandum, the Secretariat itself recognised the possibility of resorting to the Article 46(3) procedure as early as 2014: "*If it is not possible to take a decision, then the question of a request for interpretation under Article 46§3 of the Convention could arise.*"¹⁰⁰ The Department of Execution of Judgments concluded in the same Memorandum that:

*"[a]s regards the order and the calendar for the examination of the three clusters of the principal judgment, if the Committee shares the Secretariat's conclusion on the need to settle first the question of the meaning and the scope of the term 'unlawful', including, if necessary, through a request for interpretation under Article 46§3, it could decide to resume the issue of the property rights of displaced persons in March 2015."*¹⁰¹

86. The same possibility was again noted in the latest September 2023 Notes of the Secretariat.¹⁰²
87. Hence, on the whole, I consider the circumstances ripe for triggering the application of Article 46(3) to request the Committee of Ministers to refer the matter to the Court for an interpretative ruling. This is also justified when one appreciates the potential ramifications of the Secretariat's interpretation of *Demopoulos* in its broader international context in light of current developments. If the proposition is accepted, that an occupying power can take measures to effectively eliminate its duty of *restitutio in integrum* under the Convention on the basis of *ex post facto* domestic law authority, and thus escape from its obligations of compliance merely by paying compensation, such a stipulation is liable to have grave

¹⁰⁰ *Stock-taking concerning the violations established by the Court in the case Cyprus against Turkey and analysis of the impact of the judgment of 12 May 2014 on the just satisfaction*, H/Exec (2014)8, 25 November 2014, paras 35-36.

¹⁰¹ *Id.*, para 37.

¹⁰² 1475th meeting of the CM(DH), 19-21 September 2023, H46-37 Cyprus v. Turkey (no. 25781/94), CM/Notes/1475/H46-37, p.7.

consequences. For example, invading powers following an act of aggression would have every incentive to transfer, alienate and exploit occupied territory and eliminate *in toto* an obligation for restitution of property without international responsibility, if all that was required was to establish a domestic mechanism in order to *ex post facto* (and unilaterally) determine compensation.¹⁰³

G. Proposed Question for the Purposes of Article 46(3) of the Convention

88. For all of the foregoing reasons, I have formulated the following question which might serve as a proposal for debate for the purposes of the referral mechanism under Article 46(3) of the Convention and Rule 96(1) of the Rules of Court:

“With reference to Article 46(3) of the Convention and Rule 96(1) of the Rules of Court, the Committee of Ministers decides to refer to the European Court of Human Rights a request to deliver a ruling on the following question of interpretation related to paragraph 63 of the Court’s judgment in *Cyprus v Turkey* ([GC], no. 25781/94, 12 May 2014, (just satisfaction)):

Do the terms “*unlawful sale or exploitation*” in the fourth sentence of the paragraph refer to: (i) the sale and exploitation of property which are not in conformity with the law applicable in the “TRNC”; or (ii) all sale and exploitation made without the consent of the Greek Cypriot owners?”

Paris, 1 July 2024,



Robert Spano

¹⁰³ I note in this regard that Russia has been held responsible by the Court for, *inter alia*, the killing of civilians and the torching and looting of houses in Georgian villages in South Ossetia following its occupation. It is estimated that thousands of ethnic Georgians are still unable to return to their property, see *Georgia v Russia (II)*, [GC], no. 38263/08, §§ 214-222, 21 January 2021. In respect of occupied Crimea, the Court has also accepted that there is sufficient *prima facie* evidence of an administrative practice by Russia of expropriation without compensation of property from civilians and private enterprises (including through regulatory measures such as nationalisation laws), in addition to arbitrary raids of private dwellings, among other Convention violations, see, e.g. *Ukraine v. Russia (re Crimea)* ((dec.) [GC], nos. 20958/14 and 38334/18, § 348, 16 December 2020 (noting Russia’s effective control over Crimea and that “a number of States and international bodies have refused to accept any change to the territorial integrity of Ukraine in respect of Crimea within the meaning of international law”).