

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



Contact: Abel Campos
Tel: 03 88 41 26 48

Date: 28/02/2013

DH-DD(2013)220

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1164 DH meeting (5-7 March 2013)

Item reference: Communication from the authorities (27/02/13) concerning the question of property rights of enclaved persons

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

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

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1164 réunion DH (5-7 mars 2013)

Référence du point : Communication des autorités concernant la question des droits de propriété des personnes enclavées

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

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

DH-DD(2013)220 : distributed at the request of Turkey / distribué à la demande de la Turquie.

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers. / Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

*Permanent Representation
of Turkey
to the Council of Europe*

Strasbourg, 27 February 2013


**2012/AVKO/8612735
Cyprus v. Turkey
Application no. 25781/94**



Mr Director General,

With reference to the document DH-DD(2012)1161 distributed by the Secretariat, I have the pleasure to enclose herewith the answers received from the TRNC authorities. Answers to the applicant's two additional questions are also included therein.

Please accept, Mr Director General, the assurances of my high consideration.


Nilgün ERDEM ARI
Deputy Permanent Representative

Enc: a/s

Mr. Philippe Boillat
Director General
Directorate General of Human Rights and Rule of Law

cc: Mr. Abel De Campos
Senior Administrator (Human Rights meetings and monitoring mechanisms)
Secretariat of the Committee of Ministers
Council of Europe

23, boulevard de l'Orangerie
67000 Strasbourg

Telephone: 03 88 36 50 94
Fax: 03 88 24 03 73
E-mail: turkdel@fr.oleane.com



1. Are the title deeds delivered by the "Republic of Cyprus" recognised in northern Cyprus? What kind of verification procedure is applied to property documentation provided by Greek Cypriots?

Yes, as a general rule, title deeds to immovable properties which are not considered by law as abandoned or not being owned after 13 February 1975 are recognized on the condition that they match the information contained in the authentic land registry records kept in the District Land Registry Office, including the name of the owner.

In the TRNC, the Lands and Surveys Department of the Ministry of Interior and Local Administrations has the exclusive responsibility for providing the means and instruments for the establishment of rights of ownership in immovable property located in the North. It is also responsible for registration, transfer or mortgage of immovable property, the tenure of land, the valuation of properties, survey and cartography and management of government lands.

The main immovable property law is the Immovable Property (Tenure, Registration and Valuation) Law (Cap. 224). According to the said Law, immovable properties are recorded in Land Registers and the Registers are kept in the District Land Registry Offices of the District where the properties are situated.

According to section 40 of the Immovable Property (Tenure, Registration and Valuation) Law and section 5 of the Immovable Property (Transfer and Mortgage) Law, (Law No. 11/1978), no transfer of or charge on any immovable property will be valid unless registered or recorded in the District Land Registry Office where the immovable property is situated. Section 5 further provides that any transfer that is not materialized in accordance with the procedure foreseen in the Law will not be effective to create, vary, transfer, extinguish or in any way affect any right or interest in any immovable property. Transfers or voluntary charges affecting an immovable property shall be made by the registered owner of such property. The executor or administrator of estate of the deceased person exercises the powers of the deceased in respect of the property until the property is transferred to the heirs according to law.

Any registered owner can transfer his/her immovable property in the North. The general procedure to be followed in transfers is regulated by the Immovable Property (Transfer and Mortgage) Law. According to section 8 of the Immovable Property (Transfer and Mortgage) Law, the transferor and the transferee appear either personally or through their duly appointed representative before the competent District Land Registry Office, which is the District Land Registry Office of Famagusta in case of properties located in the Karpaz region. The transferor and the transferee must make a signed declaration which includes, *inter alia*, details about the property, whether the transfer will be by way of gift, sale or exchange, their relationship, and deposit additional documents, such as certificate of registration of the immovable property, and receipts showing that all taxes and fees and charges have been paid.

If all the formalities are met and the immovable property is free from any attachment and charge, the registration of the transfer is made and the property is registered in the name of

the transferee as owner of the transferred immovable property and a certificate of registration (title deed) is issued thereupon to the transferee.

The original and authentic records of the Land Registers for immovable properties located in the Karpaz region dating back from early 1900s are preserved by the District Land Registry Office of Famagusta. To date, numerous transfers have been made and certificates of registration and search certificates have been issued with respect to abovementioned immovable properties. At this point, it is worth mentioning that the Greek Cypriot authorities also consider the records of this Land Registry to be primary source of information with respect to the immovable properties in the region for their internal processes.

Thus, when a person applies to a Turkish Cypriot authority with title deeds regarding immovable properties located in the Karpaz region, the authenticity of the title deeds will be verified against the records preserved and kept by the District Land Registry Office of Famagusta.

The above-noted procedure is also necessitated by the fact that the Greek Cypriot authorities enacted the Immovable Property (Transfer) (Temporary Provisions) Law (Law No. 55 of 1975) as amended, and started to register immovable properties that are located in the North even when the alleged owners could not produce valid certificate of registration or title deeds of the immovable property to be transferred. In addition, the Greek Cypriot authorities even proceeded to transfer these properties without knowing whether the property is still registered in the name of the transferor on the date and time such declaration for transfer is made. Furthermore, the transfers were made without any information as to whether the immovable property being the subject of any encumbrance or as to the transferor being then prohibited from dealing with his/her immovable property.

In fact, even the Greek Cypriot "Supreme Court" in the case of *Takis Hadjiantoni v. Michael Matsis*, as reported in Cyprus Law Reports (1979 Part I, Civil, p. 260), doubted the veracity of such transfers which were made according to the Transfer of Immovable Property (Transfer) (Temporary Provisions) Law in the absence of the records of the competent Land Registry. At page 265 and 266, the "Supreme Court" said:

"This was a Law intended to offer a facility to the parties, who on their own volition were themselves, willing to make use of it and take the risk that same entailed for their own convenience as in no way a registration made under the said Law would give a clear title to the transferee."

2. Is there any specific procedure under which an enclaved person who decides to move permanently to the south can inform the authorities of northern Cyprus about his or her intention to maintain minimum contacts with northern Cyprus and keep the ownership of his or her properties in northern Cyprus?

There is indeed a specific procedure to be used in notifying the permanent departure with the relevant authorities.

Decision 518-2008 of the Council of Ministers of the TRNC which was issued in accordance with the power entrusted to it pursuant to section 3 of Law No. 41/77 (Housing Law)

foresees that “foreigners” who move their “permanent residence”, as defined in the Decision, from the TRNC to the Greek Cypriot Administration and who do not exercise the option to transfer their properties within 1 year of their permanent departure will be deemed to be a “foreigner” for the purposes of Housing Law. However, if the foreigner maintains minimum contacts with the property and the region, then his/her property will not come within the scope of the abovementioned Law thus enabling him/her to continue to enjoy the property.

In order to notify the Turkish Cypriot authorities about the intention to maintain minimum contacts with the Karpaz region, the Karpaz resident should apply to the TRNC Lands and Surveys Department of the Ministry of Interior and Local Administrations. The applicant will need to present the necessary documents and information in order to show his/her intention to maintain minimum contacts with the property in the North. Evidence to that end may include plans showing that they will be visiting the property and/or the region regularly, and/or bank accounts in the TRNC, and/or participation in associations and/or events in the TRNC and/or similar evidence. The Ministry will then make the necessary assessment and inform the applicant of its decision. The Ministry should respond within 30 days as required under Article 76 of the TRNC Constitution. The decision may be challenged before the Supreme Court exercising revisional jurisdiction i.e. administrative court within seventy-five days of the date when the decision or act was published or, if not published or in the case of an omission, when it came to the knowledge of the person making the recourse. This right is regulated by Article 152 of the Constitution.

3. Is a TRNC identity card required to use the legal remedies available in the northern part of Cyprus? In case that an enclaved person decides to move permanently to the south, is this person obliged to remit this identity card to the TRNC authorities?

TRNC identity cards are not required for anyone to be able to use the legal remedies available in the TRNC.

According to the Courts of Justice Law (Law No. 9/1976), the district courts seize jurisdiction when a cause of action arises completely or in part in the jurisdiction of the court (24(1)(a)), and in case of a cause of action relating to immovable property, the court where the immovable property is situated has jurisdiction to hear the case (24(2)), irrespective of the nationality or place of residence of the parties to the action.

Within the context of the supervision of the execution of the remaining parts of the “Karpaz” cluster, therefore, if, for example, a Greek Cypriot resident of Karpaz wishes to move permanently to the area controlled by the Greek Cypriot Administration and wants to have access to their property in the TRNC, and his/her application to the Lands and Surveys Department aimed at demonstrating his/her intention to maintain minimum contacts with the property and the region is rejected, such a person has the right to apply to the administrative court for judicial review under Article 152 of the Constitution.

Administrators/executors may also apply to the TRNC courts when they are administering properties belonging to a deceased Greek Cypriot resident of Karpaz. For example, a certain Yannis Nikolas, as administrator of an estate belonging to a deceased Greek Cypriot Karpaz

resident, was granted an injunction by the TRNC Supreme Court exercising its revisional jurisdiction with respect to the immovable properties under his administration, restraining the TRNC from transferring by sale or by gift or putting under encumbrance the immovable properties owned by the deceased who was resident of Karpaz at the time of death (YiM Case No. 237/2012). The judgment of the Supreme Court in fact reflects the view of the Attorney General's Office conveyed to the Ministry responsible for Housing, as early as 18 June 2003, that the properties which are owned by foreigners, including Greek Cypriots, which are not abandoned by their owners will not be subject to allocation, and any act contrary to this will be considered null and void by the courts.

Furthermore, an heir to a Greek Cypriot resident of Karpaz who passed away while residing in the TRNC can take advantage of the inheritance laws of the TRNC even when s/he does not have a TRNC identity card.

Article (c) of Decision 518-2008 of the Council of Ministers of the TRNC states that the relevant legislation in force in the TRNC will also apply to the immovable properties of Karpaz residents who pass away while permanently residing in the TRNC.

The laws of inheritance are regulated by the Wills and Succession Law (Cap. 195) and the Administration of Estates Law (Cap. 189). Wills and Succession Law provides that every person is capable of inheriting, except where by his own wrongful conduct (such as by killing the deceased) he has deprived himself of such rights.

Furthermore, Law No. 67/2005 section 4 states that all natural and legal persons can bring claims to the Immovable Property Commission. Such persons can seek remedies in the form of compensation, exchange and/or restitution for properties that have been abandoned or have been deemed abandoned by the laws of the TRNC.

In addition to this, in case that a Karpaz resident decides to move permanently to the South, there is no legislative provision which obliges the person to remit his/her identity card to the TRNC authorities.

4. Must the Greek Cypriot heirs become citizens of the TRNC in order to have access to the properties that they have inherited? Are the Greek Cypriot heirs required to be holders of a Turkish Cypriot identity card in order to have the property they have inherited registered in their name?

An heir to a deceased Greek Cypriot who resided in the TRNC upon his/her death can take advantage of the inheritance laws of the TRNC without acquiring TRNC citizenship, and the property can be registered in the name of the heir even when they are not holders of a Turkish Cypriot identity card.

As noted in detail above, the laws of inheritance provide that every person is capable of inheriting, except where by his own wrongful conduct he has deprived himself of such rights.

Once the heirs inherit the properties, they can continue to have access to the properties they have inherited as long as they maintain minimum contacts with the property and the region as foreseen in the 2008 decision of the TRNC Council of Ministers. They should also advise the Lands and Surveys Department of the Ministry of Interior and Local Administrations that they wish to maintain minimum contacts.

If the heirs fail to maintain minimum contacts, and then do not transfer the properties to the people of their choice within 1 year, as a supplementary remedy, they can apply to the Immovable Property Commission in order to benefit from the range of remedies available at the Commission.

5. Are there any plans to amend the relevant legislation, so that the interpretation of “permanent residence” is reflected in order to guarantee legal certainty?

The TRNC Council of Ministers clearly defined permanent residence in Article (b) of the Decision 518-2008 by giving examples of acts that will determine whether “permanent residence” has been moved to the area controlled by the Greek Cypriot Administration for the purposes of the Decision.

The TRNC Council of Ministers proceeded to exclude from the regulation relating “foreigner” those who move their permanent residence to the area controlled by the Greek Cypriot Administration and either transfers their property within 1 year from the departure date or who maintain minimum contacts with the property and the region. In paragraph 37 of the Secretariat’s assessment in 2009 the Secretariat stated:

“37.[t]his regulation appears to be formulated “with sufficient precision to enable any individual – if need be with appropriate advice – to regulate his conduct” and to that extent it appears to satisfy the requirements of the Convention concerning the “quality of the law”.¹

6. Is there any different treatment regarding property of Greek Cypriot owners compared to other nationals?

Every foreigner who owns immovable property according to the records of the competent District Land Registry Office enjoys the same rights in relation to immovable property as long as s/he maintains minimum contacts according to the legislation currently in force.

The need to maintain minimum contacts is due to the fact that the TRNC authorities wish to maintain population in the Karpaz region in order to ensure that this region, which is located at the far tip of the island, does not become depopulated. As the people who continue to reside in this region are predominantly Greek Cypriots who own immovable property in the region, the current legislation foresees a different treatment for them when they move their permanent residence to the area controlled by the Greek Cypriot Administration, compared

¹ CM/Inf/DH(2009)39.

to other foreigners who continued to live in the TRNC after 1975. Otherwise, in the absence of a requirement on the Greek Cypriot residents of Karpaz to maintain minimum contacts with the property and the region, or to transfer the immovable property to another person within 1 year of their permanent departure thereafter, Karpaz region would be depopulated. Immovable Property Commission of course remains a supplementary remedy in case the Greek Cypriot residents fail to use the options outlined above.

7. What protective and preventive measures have been taken by the relevant authorities in respect of the property rights of the enclaved persons?

The system of redress set up in the TRNC represents not only a domestic remedy enabling the Greek Cypriots concerned to preserve, claim and if necessary challenge any infringements of their property rights but also a substantive measure capable of putting an end to the violations which come within the ambit of execution.

In other words, all the persons concerned by the judgments under 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 European Court of Human Rights. Therefore, no additional measure, of a protective or any other nature, is necessary for the purposes of execution. Indeed, if all the persons concerned by the judgments under examination can obtain adequate redress for the violations of their property rights, what purpose would be served by the adoption of additional protective measures, and to whom would these apply?

As it can be recalled, the Court criticised the fact that there was not a distinction between the property rights of those Greek Cypriots who left before 1974 and thereafter. The finding of the Court stemmed from the fact that there were not any effective remedies that were available for those who left before 1974.

Now, there is not only an effective and accessible remedy for those Greek Cypriots who left before 1974, as found by the European Court of Human Rights in the *Demopoulos and others* decision,² but also a distinction between the two categories as the current regulatory decision in force 518-2008 ensures that the Greek Cypriot property owners can continue to enjoy their properties as long as they maintain minimum contacts with the property or transfer the property to another person within 1 year from the date they move their permanent residence to the area controlled by the Greek Cypriot Administration. Otherwise, they will have the same Convention-compliant remedies that are available to Greek Cypriots who left before 1974, namely the Immovable Property Commission.

Furthermore, the laws of inheritance enable everyone capable of inheriting to do so irrespective of their origin. Thus, heirs of persons who pass away while permanently residing in the TRNC are also eligible to inherit such properties. In case when the properties of the heirs are deemed abandoned, they have the right to seek recourse before the Immovable Property Commission.

² *Demopoulos v. Turkey* (application no. 46113/99) and 7 other cases.

Thus, since the measure adopted by the Turkish Cypriot authorities are such as to put an end to the violations found and prevent new violations, if any, the authorities have discharged their obligations in pursuance of Article 46 of the Convention, and other measures cannot be required for the purposes of execution.

8. What about the property rights of Karpaz Greek Cypriots who pass away while not residing in the Karpaz (e.g. people who moved to the South because of health reasons)? Are they still considered as “permanent residents” and are their heirs subject to the same laws regarding inheritance that apply to the citizens of the TRNC?

At the outset, it should be stated that the European Court of Human Rights’ finding relating inheritance rights of persons in the South concerned the property of Greek Cypriots who passed away while residing in the North.

As long as it is demonstrated that the Karpaz Greek Cypriot intends to maintain minimum contacts with the property and the Karpaz region before his/her departure to the area controlled by the Greek Cypriot Administration in the South by lodging an application to the Lands and Surveys Department of the Ministry of Interior and Local Administrations after 27th of February 2008, and this application is accepted, when this person dies, the heirs of Karpaz Greek Cypriots residing in the South may benefit from the laws regarding inheritance that apply to the citizens of the TRNC.