

## SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



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*Item reference:* Case of Cyprus against Turkey (Application No. 25781/94) -  
Communication from the delegation of Cyprus.

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

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*Référence du point :* Affaire Chypre contre Turquie (Requête n° 25781/94)-  
Communication de la délégation de Chypre.

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REPUBLIC OF CYPRUS  
PERMANENT REPRESENTATION TO THE COUNCIL OF EUROPE

21 May 2010

Mr Philippe Boillat  
Director General  
Directorate General  
Human Rights and Legal Affairs

**Case of Cyprus v. Turkey (application no 25781/94)**  
**Judgment of the Grand Chamber of 10 May 2001 //**  
**Need for Turkey to provide "trnc laws and decisions" on "foreigners'**  
**abandoned" property (Greek Cypriot-owned) and its distribution**  
**to Turkish Cypriots and/or settlers**

Dear Mr. Boillat,

Upon instructions from my government, enclosed herewith for circulation to all delegations, please find a memorandum on the above subject.

Its purpose is to demonstrate, *inter alia*, that there is an imperative need for the respondent state to produce the "requested laws and decisions" so that the Committee of Ministers has tangible evidence enabling it to decide whether or not Turkey continues to violate property rights in the occupied part of Cyprus, especially in relation to Greek Cypriot enclaved persons.

Having carefully examined the matter, my government is of the position that Ankara remains in breach of those rights. No real substantial proof has been presented to the contrary.

Sincerely Yours,

Euripides L. Evriviades  
Ambassador / Permanent Representative

cc : Mrs Mireille Paulus  
Secretary to the Committee of Ministers

Mr Simon Palmer  
Principal Administrator (Human Rights)  
Secretariat of the Committee of Minister

COMITÉ DES MINISTRES
21 MAI 2010
ENREGISTRÉ N Transmis le 206 à

## SUMMARY OF MEMORANDUM ON

### **Need for Turkey to provide "trnc<sup>1</sup> laws and decisions" on "foreigners' abandoned" property (Greek Cypriot-owned) and its distribution to Turkish Cypriots and settlers**

#### **I. WHY THE REQUESTED "LAWS AND DECISIONS" ARE NEEDED**

1. **There is a serious need for Turkey to produce the requested "Laws and decisions" so that the Committee of Ministers has evidence enabling the Committee to decide that Turkey's violations continue and, in particular:**
  - (a) to assess whether Turkey is still pursuing her policy of eliminating the remaining Greek Cypriot population of the Karpas, a discriminatory policy found in *Cyprus v. Turkey* to be degrading treatment in violation of Article 3;
  - (b) to assess whether violation of Article 1 of Protocol No.1 continues in relation to Greek Cypriots living in northern Cyprus because their right to peaceful enjoyment of their possessions was and is not secured in case of their permanent departure from that territory;
  - (c) to assess whether the inheritance rights of persons living in southern Cyprus in connection with the property in northern Cyprus of deceased Greek Cypriot relatives continue not to be recognized; and
  - (d) to assess, in relation to the Committee's forthcoming agendas, whether, in similar fashion, Turkey is in 2010 pursuing her discriminatory and degrading policy against Greek Cypriots displaced from the Turkish-occupied part of Cyprus;<sup>2</sup>
2. The requested materials will make it apparent that, although there has been a minor "relaxation" of Turkey's policy in "TRNC Council of Ministers' Decision No 518/2008," violations have not ceased to exist and that there is non-comformity with the Convention.
3. Violation of Article 14 in conjunction with other Articles raise issues of the Committee's responsibility of ensure preclusion of continuing and future violations of a similar character. This differentiates its task from that of the

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<sup>1</sup> Any reference to the purported entity and its "laws, directives, regulations, etc." is without prejudice to the illegality and invalidity of the "trnc" and "institutions" purportedly created by it.

<sup>2</sup> The Secretariat has assessed the issues raised regarding Greek Cypriot property rights in the Karpas as being "similar to that of the property rights of the Greek Cypriots definitively departing from the north" (CM/Del/OT/DH 2008/1043 p.7). The latter issue is due to be discussed by the Committee. Thus it is necessary that the requested "Laws and decisions" be supplied for that purpose also. Otherwise, again the Committee will not have clear evidence before it of Turkey's policies contrary to the Convention, to customary international law governing crimes against humanity and to the Statute of Rome and in direct conflict with the judgment in *Cyprus v. Turkey*.

Court which has a discretion to adopt a policy of judicial economy by declining to make separate, additional or further findings on other Articles where in effect the same complaints have already been found by it to be violations of related Articles.

4. In sum, only production of ALL relevant "Laws and decisions," in language comprehensible to the Committee, will establish that the Turkish policies laid down in such "Laws and decisions" conflict with the Convention. The policies incorporated in that "legislation" continue to be implemented in practice.
5. Moreover, it will become clear to the Committee that part of Turkey's proposed remedy, "Law 67 of 2005", is founded upon an unlawful and discriminatory provision ("Article 159 of the TRNC's 1985 Constitution") itself founded upon three discriminatory "Laws" ("Nos 32 and 33 of 1975 and 41 of 1977") all of which Turkey admits remain in force) and upon decisions under those "Laws". Members will also see that "Law 41 of 1977", read with "Law 27 of 1982", authorizes aiding and abetting commission of the continuing war crime of transferring parts of Turkey's civilian population to occupied Cyprus. Humanitarian law, according to International Law and developing human rights law, is relevant to interpreting the Convention and its Articles on discrimination.

## **II. FINDING BY THE COURT AND REPORTS BY THE COMMISSION IN THE CYPRUS V. TURKEY CASES**

6. The Court's findings are:
  - (i) "There had been a continuing violation of Article 1 of Protocol No.1 in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory" (para 269).
  - (ii) "In case of death [of Greek Cypriots living in northern Cyprus] the inheritance rights of relatives living in southern Cyprus were not recognized" (para 270) – "a continuing violation" of Article 1 of Protocol No.1.
  - (iii) The Karpas Greek Cypriots have "no prospect of renewing or developing their community" and

**"Greek Cypriots living in the Karpas area of northern Cyprus have been subjected to discrimination amounting to degrading treatment" (violation of Article 3).**

The Court, in view of that Article 3 finding, found it unnecessary further to examine whether Article 14 had been violated in conjunction with Article 3 (see para 315).

- (iv) As regards displaced Greek Cypriots, "in the circumstances of the present case," complaints under the heading of Article 14 (taken in conjunction with Articles 8 and 13 and Article 1 of Protocol No.1)

"amount in effect to the same complaints, albeit seen from a different angle, as those which the Court has already considered ... [when it] found that these Articles have been violated. It considers that it is not necessary to examine whether in this case there has been a violation of Article 14 in conjunction with those Articles" (para 199)

In contrast, the Commission concluded that there had been violation of Article 14 in conjunction with Article 8 of the Convention and Article 1 of Protocol No.1, by virtue of discriminatory treatment of Greek Cypriots not residing in northern Cyprus in relation to their rights to respect for their homes and to peaceful enjoyment of their possessions. Indeed, in its 1975, 1983 and 1999 Reports the Commission, found that

"interferences with the rights under ... the Convention ... concerned exclusively Greek Cypriots not residing in northern Cyprus and were imposed on them for the very reason that they belonged to this class of persons. In these circumstances the treatment complained of was clearly discriminatory" (Report, Application No. 25781/94, paras 333-4).

There were thus three explicit Commission findings of discrimination which have never been contradicted.

- (v) The Grand Chamber unanimously held that the complaint under Article 8 of the Convention concerning interference with the right to respect for family life on account of the refusal to allow the return of any Greek Cypriot displaced persons to their homes in northern Cyprus **"falls to be considered in the context of their allegations in respect of the living conditions of the Karpas Greek Cypriots"** (Holding III.3 and para 177). It then, when discussing living conditions in the Karpas, examined the refusal to permit return to their homes in the north of

Greek Cypriots, and found that Greek Cypriots were not allowed to return (para 292 and para 29). Imposition of these restrictions as a matter of policy and in the absence of any legal basis resulted in enforced separation of families. Thus there was an administrative practice of interference with the right to respect for family life" (para 293). This constituted a violation of Article 8 of the Convention right to respect for their private and family life and to respect for their home (paras 296, and 301 and Holding IV.12 by 16-1).

**The Court's findings apply equally to all displaced Greek Cypriots, and the Court's common findings and reasoning "fall to be considered" both under:**

- (a) the cluster of issues relevant to Karpas Greek Cypriots; and**
- (b) any cluster dealing with displaced Greek Cypriots in general.**

Because of the Court's finding on the right of return home and separation of families under Article 8, the Karpas cluster cannot be closed unless **the right of the Karpas residents to the peaceful enjoyment of their possessions is secured, irrespective of their departure from the occupied territory** something Turkish policy does not and will not permit "until an overall solution to the Cyprus question ... and having regard to security considerations" (para 29). Moreover, the sections of the Court's judgment on "living conditions" in the Karpas will have to be the subject of supervision in the cluster on displaced persons.

### III. REPEATED JUDICIAL ECONOMY BY THE COURT IN CYPRUS V. TURKEY AND IN DEMOPOULOS V. TURKEY

7. Cyprus had believed that the discriminatory treatment to which Greek Cypriots were subjected in the Turkish-occupied area would be pronounced upon by the Grand Chamber in Demopoulos and Others v. Turkey in relation to Article 14. (Article 3 was not put in issue before the Court.) The Court, adopting a policy of judicial economy by avoiding any duplication of findings, only dealt with Article 14 in the last paragraphs of its Admissibility Decision and considered that "no further issue arises for examination" (paras 139-143).

### IV. CONSEQUENCES FOR THE COMMITTEE OF THE COURT'S POLICY OF JUDICIAL ECONOMY

8. The Court's economical policy makes it essential for the Committee of Ministers to decide whether the general and individual measures taken by Turkey will in the current situation and for the future preclude violations of the character found in *Cyprus v. Turkey*. The Court's rulings that further separate examination was unnecessary as involving the same complaints made it clear that discrimination (whether under Article 14 or under Article 3), constituted a similar complaint as regards violations the Court had already found of Articles 8 and 13 and Article 1 of Protocol No.1.

**Discriminatory conduct by Turkey contrary to the Convention still needs to be assessed**

9. The Government of Cyprus has made comments to the Committee about both direct and indirect discrimination regarding property rights of enclaved persons.<sup>3</sup> It needs adding that the Convention and international humanitarian law both apply where a State exercises jurisdiction in foreign territory and that Convention should be interpreted in light of such International Law.

**Why "Law 27 of 1982" is needed as evidence of Turkey's policy**

10. "Law 27 of 1982" is buried in the untranslated text of "Law 41 of 1977". Such "Law", if translated and supplied, would disclose Turkey's policy of committing the war crime of transporting part of her civilian population to the territory of occupied Cyprus and of settling such persons on Greek Cypriot – owned land with grants made under "Council of Ministers' regulations". "Refugees" (defined to include settlers, who are given "citizenship" after a year, but only with Turkey's consent – matters apparent only from other unsupplied "Laws") are given top priority in distribution of Greek Cypriot-owned land and "can be supported by provision of aid in kind and in cash". Such "refugees" still have priority in being allocated land of departing or deceased Greek Cypriots of the Karpas and throughout the Turkish-occupied area whenever Greek Cypriot-owned property comes into possession of the "Housing Ministry" or when that "Ministry" decides to allocate as-yet-undistributed land "owned" by the "trnc".

<sup>3</sup> (See Records, CM/Del(Act/DH(2009)1065 final of the meeting of 15-16 September 2009). Earlier, Cyprus submitted to the Secretariat a Further Memorandum on Property Issues concerning Enclaved Greek Cypriots pursuant to the Court's findings in *Cyprus v. Turkey* together with a comprehensive Annex, explaining the non-conformity with the Convention of the system proposed by Turkey..

**Need to establish continuing discrimination by Turkey**

11. It needs to be established that Turkey continues to discriminate against Greek Cypriots and Greeks –by misappropriating and exercising control of their property and by fresh interferences, including by discriminatory procedures (like those in "Law 67/2005" requiring the "Immovable Property Commission" to apply the principle of bi-zonality to ensure that land in the Turkish-occupied area is predominantly Turkish Cypriot-owned). That discrimination (under "Law 67/2005" and "Article 159 of the TRNC Constitution") is given practical effect by the definitions of "alien" or "foreigner" contained in "Laws 32 and 33 of 1975, section 2" and "Law 41 of 1977, section 3". Thus it is stipulated that foreigner means

"Greeks of Cypriot and Grecian origin, companies ... established by them ... [and] it also means subjects of other States or of any national origins that shall be defined as "foreigners" by a decree issued by the Council of Ministers".

**Why the "decrees" or "decisions" are the best and clearest evidence of discrimination**

12. Although in 1975 "abandoned immovable properties" belonging to some foreign nationals of third States were vested in the "TFSC," the "authorities of the TFSC" later exempted most foreign nationals other than those of Cypriot or Grecian origin. This re-inforcement of Turkey's discriminatory policy needs to be established by production of the "decrees" and "decisions" of the "TFSC/TRNC Council of Ministers" defining or exempting "foreigners". Only when "section 3" is read together with the "Council of Ministers' decrees" defining "foreigners" and with "sections 5, 6, 6A, 71, 71A, 72B, 80, 81,90 and 95" (all untranslated) and account is taken of what persons are defined as "refugees", will it be obvious to non-lawyers that the provisions are designed to achieve ethnic cleansing in respect of Karpas Greek Cypriots and to transfer their property to Turkish Cypriots and Turkish settlers and to pursue the same discriminatory policy respecting all displaced Greek Cypriots.

**The onus of showing cessation and preclusion of violation rests on Turkey**

13. The onus rests on Turkey to show that "TRNC Laws" do not discriminate regarding persons' rights to property. The Commission's Reports of 1976, 1983 and 1999 concluded that such "Laws" discriminated. Those conclusions



still stand, un-reversed. Moreover, the Court found Karpas Greek Cypriots were subject to severe discrimination amounting to degrading treatment (Cyprus v. Turkey, paras 302-311). By failing to produce the relevant "Laws and decisions," it must be presumed that Turkey admits their discriminatory character. Neither before the Commission, the Court, nor this Committee has Turkey expressly denied discrimination. Nor has she denied that "legislation" institutionalizing the interferences with Greek Cypriot owners' rights in favour of "TRNC citizens" and settlers must, according to "Law 67 of 2005" and the "TRNC Constitutional Court," remain in operation. In fact, according to "TRNC Law" and actual practice, "Law 67 of 2005," "Law 41 of 1977," "Law 27 of 1982," "Laws 32 and 33 of 1975" and "Article 159 of the 1985 TRNC Constitution" together provide the framework for confiscation or continuing expropriation of Greek Cypriot-owned property. Likewise, they are the basis for grant or confirmation of property or use rights over Greek Cypriot-owned property to "Turkish Cypriot citizens" and Turkish settlers.

**VI. CONCLUDING REQUEST TO COMMITTEE TO REITERATE ITS CALL TO TURKEY TO PRODUCE RELEVANT "LAWS AND DECISIONS"**

14. To establish the continuing discrimination underlying Turkey's land policy in the Karpas the Committee is requested again to require Turkey to provide the relevant "Laws, decisions and decrees of the TRNC/TFSC," particularly the "decisions and decrees" under "Law 41 of 1977, Laws 32 and 33 of 1975," and "Law 27 of 1982," with all being submitted both in the Turkish language and in English translation. Translation of the full text of "Law 41 of 1977" should also be supplied.

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## MEMORANDUM

**Need for Turkey to provide "trnc<sup>1</sup> laws and decisions"**  
**on "foreigners' abandoned" property (Greek Cypriot-owned)**  
**and its distribution to Turkish Cypriots and settlers**

1. According to Decision at the Deputies' meeting on 4 March 2010, the Republic of Cyprus undertook to provide a written explanation why it seemed "indispensable" for the Republic of Cyprus that Turkey supply to the Committee all "TRNC (TFSC) Laws and decisions" governing foreigners' abandoned property, providing at the same time English translations of such "legislation". The Republic of Cyprus considers that the appropriate criterion for requiring production of such materials is, rather than "indispensability", a serious need in the prevailing circumstances i.e. there is currently a serious need for production by Turkey of the documents.<sup>2</sup>

- I. **WHAT THE COMMITTEE NEEDS TO ASSESS AND WHY THERE IS A SERIOUS NEED TO SUPPLY THE REQUESTED "LAWS AND DECISIONS"**

2. There is a serious need for Turkey to produce the requested "Laws and decisions" to the Committee of Ministers. This is because they will be evidence which will facilitate the Committee's decision-making on whether Turkey's violations continue and whether in future they will be precluded. In particular, such evidence will enable the Committee

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<sup>1</sup> Any reference to the purported entity and its "laws, directives, regulations, etc." is without prejudice to the illegality and invalidity of the "trnc" and "institutions" purportedly created by it.

<sup>2</sup> Use of the absolute standard implied in the concept of "indispensability" is an inappropriate test for requiring a violating State to provide the Committee with documents facilitating its decision-making. A violating State is duty-bound to co-operate with the Committee so that the latter can evaluate the situation and assess whether any proposed remedy will ensure cessation of violations and preclusion of similar violations having regard to the "legal provisions" whose implementation caused the violations and which risk similar violations being committed. Little in this world is "indispensable". A simple alternative would be for Turkey to admit to the Committee that she practices discrimination as alleged. Even so, in order to assess whether admitted discrimination had been eliminated, it would remain necessary for the Secretariat and the Committee to have access to those "legal provisions" so that they would be alert to the deficiencies and violations requiring remedy. Were Turkey explicitly to admit that her policy and practices are discriminatory in terms of the Convention and were she then to submit the materials, this would end a series of long debates and avoid any need for further Memoranda on discrimination.

- (a) to assess whether the Court's finding that Turkey had violated Article 1 of Protocol No.1 (Cyprus v. Turkey, para 269) continues in relation to Greek Cypriots living in northern Cyprus, because their right to peaceful enjoyment of their possessions was and is not secured in case of their permanent departure from that territory. (The situation still is that any such person is deemed to be a "foreigner", so that his property is deemed to be "abandoned", whereupon it becomes vested in the "TRNC," which then distributes such property to "TRNC citizens" and Turkish settlers, who, among "refugees," have priority); and
- (b) to assess whether the Court's finding that Turkey had breached Article 1 of Protocol No.1 (ibid., para 270) continues in respect of the non-recognition of the inheritance rights of persons living in southern Cyprus - and indeed of the rights of persons living elsewhere than in the "TRNC" - to property in northern Cyprus of deceased Greek Cypriot relatives. (Such property in most cases still vests in the "TRNC", which distributes it to "TRNC"citizens" and to Turkish settlers, who have priority in receiving any allocations, unless the relatives assume permanent residence in the "TRNC" within a year of inheriting the property.)
- (c) to assess whether, under the guise of technical legal language and complex mechanisms, Turkey is still pursuing her policy of "ensuring that, inexorably, with the passage of time, the community would cease to exist," so that the remaining Greek Cypriot population of the Karpas would be eliminated. That discriminatory policy was found by the Court in Cyprus v. Turkey to be degrading treatment in violation of Article 3 of the Convention;<sup>3</sup>
- (d) to assess whether, in relation to forthcoming agendas of the Committee, Turkey is in 2010 in similar fashion pursuing her discriminatory and degrading policy (again reflected in these "Laws and

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<sup>3</sup> See *Cyprus v. Turkey*, Application No. 25781/94, 10 May 2001, Judgment, paras. 302-311, especially para 309.

decisions") against Greek Cypriots displaced from the Turkish-occupied part of Cyprus;<sup>4</sup>

3. The following concrete examples may assist the Committee in concluding that the as-yet-unsupplied or untranslated "Laws and decisions" are needed for informed decision-making:
  - (i) If the Committee looks at "section 3 of Law 41 of 1977," it is likely to conclude that all aliens – and not only Greek Cypriots and Greeks – who depart from the Karpas by dying or assuming residence in the Government-controlled area, will lose their Karpas property unless they transfer it within a year to another "TRNC permanent resident". Many COE States have in the past restricted non-resident aliens from owning property, and some still restrict ownership in special circumstances in certain specified areas. Thus such limited discrimination is not regarded as serious. However, as regards the Turkish-occupied part of Cyprus, the discrimination is wide-spread general policy and is on the basis of particular, specified ethnic, racial or national origins or identity, being confined to Greek Cypriots and Greeks, who are singled out for targeting. Only the missing "decisions" can prove that only (or alternatively, predominantly) Greek Cypriots and Greeks are singled out for discriminatory expropriation of their property in violation of Articles 14 and 3 and Article 1 of Protocol No. 1.
  - (ii) If the Committee relies on the material now before it, particularly the largely untranslated "Law 41 of 1977" and Memoranda by Turkey, it will assess the position as being that, whenever Greek Cypriot Karpas residents come to the government-controlled areas, or if they die, their properties must be transferred within a year to "TRNC permanent

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<sup>4</sup> The Secretariat has assessed the issues raised regarding Greek Cypriot property rights in the Karpas as being "similar to that of the property rights of the Greek Cypriots definitively departing from the north" (CM/Del/OT/DH 2008/1043 p.7). The latter issue is due to be discussed by the Committee. Thus it is necessary that the requested "Laws and decisions" be supplied for that purpose also. Otherwise, again the Committee will not have clear evidence before it of Turkey's policies contrary to the Convention, as well as to customary international law governing crimes against humanity and to the Statute of Rome.

residents or citizens,” and moreover, that such properties will then be transferred to “refugees,” instead of to their own children, unless those children assume permanent residence in the “TRNC” within one year. In contrast, “Law 27 of 1982,” which has not been supplied, makes it clear that not only does “refugees” include settlers from Turkey (who amounted to 115,000 in March 2003 according to Special Rapporteur Laakso’s Report for the Parliamentary Assembly of the Council of Europe), but that settlers are given priority over other “refugees” in acquiring the use or ownership of property belonging to Greek Cypriots. Thus Greek Cypriot old age pensioners are deprived of their family properties and the right to pass these on to later generations in favour of new Turkish settlers.

4. In sum, unless the “Laws and Decisions” are supplied and translated, the Committee will not be able to appreciate that
  - (i) there is serious discrimination based on ethnic, racial or national origins or identity;
  - (ii) there is, and will continue to be, deprivation of property and denial of inheritance rights both of departing or dying Greek Cypriots and of their descendants or heirs;
  - (iii) the primary beneficiaries of the deprivation are not Turkish Cypriots displaced from the Government-controlled areas (in consequence of Turkey’s invasion of Cyprus and policy of internal population transfer between 1974-1976) but are settlers from Turkey, who have been assisted in settling in the “TRNC” by “the Turkish authorities” and who have since 2003 been arriving in increasingly large numbers – as well as in the period 1974 to 2002; and
  - (iv) nearly all Turkish Cypriots were prior to 1996 allocated use or ownership of Greek Cypriot-owned properties, with the result that only some of their descendants will remain in the “refugee” pool eligible for

allocation by the "TRNC" to them of Greek Cypriot-owned land or for their eligibility to purchase it from the "TRNC".

5. If supplied, the requested materials will, when analysed together with those "Laws and decisions" already supplied either to the Committee or to the Court in *Cyprus v. Turkey*, make it apparent to the Committee that, although there has been a minor "relaxation" of Turkey's policy (by way of the convoluted provisions of "TRNC Council of Ministers' Decision No 518/2008" under the "Housing, Land Distribution and Special Property Law No.41 of 1977"), the violations found by the Court have not ceased to exist. Thus there is not conformity with the Convention.
6. It should also become apparent to the Committee that, despite the minor relaxation, Turkey's discriminatory and degrading policies remain in force as an aggravating factor and result in violation of Article 3 of the Convention (as found by the Court in *Cyprus v. Turkey*, paras 302-311). Violation of Article 3 is in addition to any violation of Article 14 in conjunction with Article 3 and Article 1 of Protocol No.1. Such violations raise issues which the Committee of Ministers is not at liberty to by-pass by deciding that it is not necessary to consider any violations over and above those specifically found by the Court in *Cyprus v. Turkey*. The Committee's duty of ensuring preclusion of continuing and future violations of a similar character differentiates its task from that of the Court. In contrast to the Committee, the Court has a discretion when it is making findings of violations of the Convention to adopt a policy of judicial economy. Thus, whereas the Court may decline to make separate, additional or further findings on other Articles where in effect the same complaints have already been considered and pronounced upon by it by way of a finding of a violation, the Committee's task is to ensure preclusion of future similar violations.
7. Only when all the "Laws and Decisions" are supplied, and in a language comprehensible to the Committee, will the framework and structure of the policy underlying Turkey's measures be manifested to the Committee. Seen



as a whole – and not supplied by a few out-of-their context sections<sup>5</sup> - it will become apparent that Turkey has not taken the measures necessary to execute the Judgment in Cyprus v. Turkey. It will also be apparent that she has not made effective provision to ensure that similar violations (such as violations under Articles 14 and 3) are precluded, even if violations under those Articles have, in view of its findings of violation of other Articles deliberately not been pronounced upon by the Court.

8. In sum, only production of ALL relevant "Laws and decisions" will make it clear to the Committee that the Turkish policies laid down in such "Laws and decisions", and which continue to be implemented in practice, are in conflict with the Convention.
9. Significantly, the Committee will then also appreciate that part of Turkey's proposed remedy mentioned in connection with the Karpas, namely "Law 67 of 2005", is founded upon an unlawful and discriminatory provision ("Article 159 of the TRNC's 1985 Constitution") itself founded upon three discriminatory "Laws" ("Nos 32 and 33 of 1975 and 41 of 1977") all of which Turkey admits remain in force) and upon decisions under those "Laws".
10. Members will also be able to appreciate that "Law 41 of 1977", as amended by "Law 27 of 1982" is of serious concern. In the years since Cyprus v. Turkey was decided, International Law and Convention jurisprudence have developed, so that, in interpreting and applying the Convention, account needs to be taken not only of human rights law, but also of the complementary regime of humanitarian law, which includes international criminal law. The aforementioned "Laws," when their contents can properly be assessed, will show that the policy they incorporate, together with implementation of the said "Laws," results in commission of the continuing war crime of transferring parts

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<sup>5</sup> The full text of "Law 41 of 1977," the basis for the violation found by the Court and also the basis for the alleged remedial measure, has not yet been provided other than in Turkish – despite repeated requests. Of nearly 120 sections, only 9 have been produced in a language the Committee can understand. However, there are many other sections which the Committee needs to examine: see e.g. sections listed in para 28 below.

of the Occupying Power's civilian population to the territory it occupies in Cyprus.<sup>6</sup>

11. If the Committee "dispenses" Turkey from her obligation to provide the "Laws and decisions," the Committee will be in a situation in which it risks taking the false view that Turkey's legislative framework and her proposals to amend this will result in restoration of legality and will prevent further similar breaches of the Convention. In reality, a façade of legalisms and technicalities, presented in bits and pieces by Turkey, will have permitted the Occupying Power to present herself as having changed her fundamental policy of violations, despite continuation of that policy in practice.

**II. THE LEGAL POSITION AS FOUND BY THE COURT AND REPORTED BY THE FORMER COMMISSION OF HUMAN RIGHTS IN CYPRUS V. TURKEY**

12. Prior to the Grand Chamber's Decision as to the Admissibility of the Applications by Demopoulos and Others,<sup>7</sup> the position regarding currently still relevant violations was, according to the jurisprudence of Convention organs, that:

- (a) The Grand Chamber in *Cyprus v. Turkey* (at para.269 and in Holding IV 9 by 16-1) held that

"there had been a continuing violation of Article 1 of Protocol No.1 in respect of Greek Cypriots living in northern Cyprus in that their right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory".

- (b) The Grand Chamber in *Cyprus v. Turkey* (at para 270 and in Holding IV 9, by 16-1) held that

<sup>6</sup> Commission of such acts, including their aiding and abetting, constitutes a crime in customary international law as well as under Article 49.6 of the Fourth Geneva Convention and under section 8.2(b)(viii) of the Statute of Rome.

<sup>7</sup> Application Nos. 46113/99 etc, 1 March 2010. There could not have been and were no findings of violations, because the applications were decided and disposed of on admissibility grounds. However, in para 143, the Court stated it was having regard to "its findings" (which were on inadmissibility – see paras 129 and 138 and infra, para 14).

"in case of death [of Greek Cypriots living in northern Cyprus] inheritance rights of relatives living in southern Cyprus was not recognized".

This constituted "a continuing violation" of Article 1 of Protocol No.1.

- (c) The Grand Chamber in *Cyprus v. Turkey* (2001) found that the Karpas Greek Cypriots have "no prospect of renewing or developing their community" and that the discriminatory treatment in the period 1994-2001 "attained a level of severity which amounted to degrading treatment". This was in violation of Article 3. The Court found:

**"Greek Cypriots living in the Karpas area of northern Cyprus have been subjected to discrimination amounting to degrading treatment".<sup>8</sup>**

The Court, in view of that Article 3 finding, found it unnecessary further to examine whether Article 14 had been violated in conjunction with Article 3 (see para 315).<sup>9</sup>

- (d) The Grand Chamber (also in *Cyprus v. Turkey* at para 199) as regards displaced Greek Cypriots considered that "in the circumstances of the present case" complaints under the heading of Article 14 (taken in conjunction with Articles 8 and 13 and Article 1 of Protocol No.1)

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<sup>8</sup> At paras 309-311 and Holding IV.15 (by 16-1).

<sup>9</sup> Similarly (in para 317) the Court found that, having regard to the particular circumstances of the case, it was not necessary to examine whether in the 1994-2001 period there had been a violation of Article 14 taken with other relevant Articles (namely, Article 8 and Article 1 of Protocol 1, both of which the Court found had been violated: see paras 299-301 and 270). The Court then went on to take the view that instead it should conduct an overall global examination under Article 8 of the general allegation that Turkey "pursues a policy which is intended to claim the northern part of Cyprus for Turkish Cypriots and settlers from Turkey to the exclusion of any Greek Cypriot influence" (paras 299-300). It found that specific restrictions were factors aggravating the violations (para 301). This finding of aggravation was why the Court held it was unnecessary to examine the issue of implantation of Turkish settlers in northern Cyprus (paras 285, 299 and 301).

"amount in effect to the same complaints, albeit seen from a different angle, as those which the Court has already considered ... [when it] found that these Articles have been violated. It considers that it is not necessary to examine whether in this case there has been a violation of Article 14 in conjunction with these Articles".<sup>10</sup>

- (e) In contrast, the Commission of Human Rights had in 1999 concluded, by 19-1, that there had been violation of Article 14 in conjunction with Article 8 of the Convention and Article 1 of Protocol No.1, by virtue of discriminatory treatment of Greek Cypriots not residing in northern Cyprus in relation to their rights to respect for their homes and to peaceful enjoyment of their possessions. Indeed, in its 1975, 1983 and 1999 Reports the Commission, having had the then "Laws of the TFSC and TRNC" (so far as available) cited to them, found that

"the acts violating the Convention were exclusively directed against members of one of the two communities in Cyprus, namely the Greek Cypriot Community"

and that

"interferences with the rights under ... the Convention ... concerned exclusively Greek Cypriots not residing in northern Cyprus and were imposed on them for the very reason that they belonged to this class of persons. In these circumstances the treatment complained of was clearly discriminatory" (Report, Application No. 25781/94, paras 333-4, emphasis added).

There were thus 3 explicit Commission findings of discrimination. In contrast, the Grand Chamber, in the circumstances of having already found

<sup>10</sup> It must be emphasized that the Court found violations of Article 8 and 13 and Article 1 of Protocol No.1. Because the Committee is not currently examining those violations, whether they have ceased, and whether their recurrence is precluded, this Memorandum does not expand on the Court's findings. Nevertheless, as pointed out in n.3 above, they raise similar issues to those raised in case of Greek Cypriots definitively departing from the Karpas.

violations of the provisions of Articles 3 and 8 and Article 1 Protocol No.1 regarding Greek Cypriots of the Karpas and violations of Articles 8 and 13 and Article 1 Protocol No.1 regarding displaced Greek Cypriots in general, then held it unnecessary

"to examine whether in this case there has been a violation of Article 14 taken in conjunction with those Articles by virtue of the alleged discriminatory treatment of Greek Cypriots".<sup>11</sup>

- (f) The Grand Chamber in *Cyprus v. Turkey* unanimously held that the complaint under Article 8 of the Convention concerning interference with the right to respect for family life on account of the refusal to allow the return of any Greek Cypriot displaced persons to their homes in northern Cyprus

"falls to be considered in the context of their allegations in respect of the living conditions of the Karpas Greek Cypriots" (Holding III.3 and para 177)

The Grand Chamber observed that, because Greek Cypriots could not return to their homes in the north, aggrieved persons could not be expected to avail themselves of "TRNC" domestic remedies (para 171). The Grand Chamber then examined the refusal to permit return to their homes in the north of Greek Cypriots and found that Greek Cypriots were not allowed to return (para 292 and para 29 – in which Turkey confirmed this policy). Imposition of these restrictions as a matter of policy and in the absence of any legal basis resulted in enforced separation of families. Thus there was

"what in effect amounts to an administrative practice of interference with the right to respect for family life" (para 293).

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<sup>11</sup> See *Cyprus v. Turkey*, para 199. Paras 315, 317 and 301 are to similar effect - as explained in n.8 and para (d) above.

This constituted a violation of Article 8 of the Convention right to respect for their private and family life and to respect for their home (paras 296, and 301 and Holding IV.12, by 16-1).

**These findings apply equally to all displaced Greek Cypriots and fall to be considered both under:**

- (a) the cluster of issues relevant to Karpas Greek Cypriots**
- (b) any cluster dealing with displaced Greek Cypriots in general.**

It is submitted that, because of the Court's finding of violation of Article 8, the Karpas cluster cannot be closed unless the right of the Karpas residents to the peaceful enjoyment of their possessions is secured, irrespective of their departure from the occupied territory something Turkish policy does not and will not permit "until an overall solution to the Cyprus question ... and having regard to security considerations" (para 29). (The need to remedy the Article 8 violation is of course in addition to the need to remedy violations of Article 1 of Protocol No.1.) It should be added that the Court's findings under the sections of the Court's judgment on "living conditions" in the Karpas will have to be the subject of supervision in the cluster on displaced persons, because the Court was in those sections simultaneously considering violation of the right of displaced Greek Cypriots to family life: see para (f) above, quoting *Cyprus v. Turkey* , para 177 and Holding III.3.

### **III. REPEATED JUDICIAL ECONOMY BY THE COURT SUBSEQUENTLY TO CYPRUS V. TURKEY**

#### **(a) Continuation of the Court's economical approach**

13. In *Xenides-Arestis v. Turkey* (Merits), Application No. 46347/99, Judgment, 22 December 2005, paras 35-36, the Court, since it had found violation of Article 8 and Article 1 of Protocol No.1, considered there was no reason to depart from its economical approach in *Cyprus v. Turkey*. Thus it was "not necessary to carry out a separate examination of the complaint under Article 14 ...".

Earlier, in *Michaelidou Developments Ltd and Michael Tymvios v. Turkey*, Application No. 1616390, 31 July 2003, at paras 37-8, the Court had decided "a separate examination" was unnecessary in light of the approach in *Cyprus v. Turkey* and "its conclusion" that Article 1 Protocol No.1 had been violated. The Court re-iterated this position in *Alexandrou v. Turkey*, Application No. 16162/90, 20 January 2009, at paras 38-39, and in *Ioannou v. Turkey*, Application No. 18364/91 at para 43. There were thus 5 judgments, including that of the Grand Chamber in *Cyprus v. Turkey*, finding separate examination of an Article 14 violation to be unnecessary when the Court had already found violation of Articles 8 and 1 of Protocol No.1. **In all these cases, the merits had been adjudged and findings had been made.**

**(b) The Court's application of the principle of Judicial Economy in *Demopoulos v. Turkey***

14. Cyprus had believed that the discriminatory treatment to which Greek Cypriots were subjected in the Turkish-occupied area would be pronounced upon by the Grand Chamber in *Demopoulos and Others v. Turkey* in relation to Article 14, even though the main thrust of those applications was in relation to Article 8 and Article 1 of Protocol No.1. (Article 3 was not put in issue before the Court.) However, the Grand Chamber devoted over 98% of its Decision to admissibility issues regarding property. Its focus was examination whether a purported remedy established by the "TRNC" provided an effective framework of redress "in the current situation of [military] occupation that is beyond this Court's competence to resolve" (para 127), with the result that applicant property owners who did not use this mechanism would have their complaints rejected for non-exhaustion of domestic remedies. Even so, the Court held that applicants retained the right to invoke the Convention after exhausting the purported remedy, or could "await a political solution" (para 128).
15. Only in 5 very brief concluding paragraphs (paras 139-143) did the Court turn to Article 14. It observed that

"it has not so far found any separate breach under Article 14 of the Convention in previous cases concerning property in northern Cyprus" [namely, in those cases explained in para 12 above].

Purporting to apply those cases, the Court then considered that

"no further issue arises for examination concerning the remaining complaints ..."

which included Article 14.

The Court prefaced this conclusion by basing it on

"the facts of the cases, the submissions of the parties and its findings under Article 1 of Protocol No.1 and Article 8 of the Convention" (para 143).

The assertion by the Court that it had made "findings" on these Articles can only mean findings as to admissibility i.e. conclusions. The Court does not make "findings" as to merits in admissibility Decisions. In any event, paras 49, 129 and 138 of its Decision make it clear that the Court's "findings" were on admissibility. Thus, so far as concerns Article 1 Protocol No. 1, the Decision was examining Turkey's objection "concerning domestic remedies alone," i.e. not also the merits (see paras 49 and 129). Similarly, so far as concerns Article 8, the Court concluded that the claim was inadmissible as being manifestly ill-founded (para 138).

16. The results of the Court's statement that "findings" were made under the Articles cited – without any indication as to whether these were findings on admissibility or on merits – were that
  - (a) superficially it appeared that the Court had brought its decision not to examine a separate breach or further issue arising under Article 14 under the umbrella of the 5 above-mentioned precedents which justify



non-examination. (It will be recollected that such non-examination is permissible, always provided that "findings" on what are in effect the same complaints have already been made); and

(b) the Court avoided the need to make a finding which risked it being "injudicious" (i.e. lacking in practical wisdom, or imprudent, unsagacious, impolitic, inexpedient or unwise) by attempting to impose an obligation of restitution on an invading power in military occupation (see para 116 read with 112). This risk would have arisen if the Court had made a finding of discrimination, in which event there would be no obligation to exhaust the alleged "TRNC" remedy, which does not cover discrimination. Had this complaint been upheld, the Court would then have been faced with "unrealistic" expectations that it should directly order the Turkish Government (which was in military occupation of northern Cyprus) to cease discrimination. The Court's concern about having to make such an order is *mutatis mutandis*, shown in para 112 of the Court's Decision on its inability to order access to and possession of property. The Court also admitted (at para 127) that

"redress in the current situation of occupation ... is beyond this Court's competence to resolve".

Whereas the Court may not have physical competence to make effective orders, or may feel it "injudicious" to make orders unlikely to be obeyed by an Occupying Power, the Committee of Ministers has competence to set in train procedures to sanction a State which refuses to conform with the Convention and with Orders by the Court.

**IV. CONSEQUENCES FOR THE COMMITTEE OF THE COURT'S POLICY OF JUCICIAL ECONOMY**

**(a) The Committee of Ministers has not received current guidance on the relevance of Articles 14 and 3 to the situation of Greek Cypriots of the Karpas and of displaced Greek Cypriots**

16. The Grand Chamber's judicial economy in *Cyprus v. Turkey* and in 4 later judgments of Chambers – in which the Court declined to make additional, or separate, or further findings has deprived the Committee of Ministers of invaluable guidance on the Convention consequences of Turkey's discriminatory policies of interfering only with Greek Cypriot and Greek-owned property, of in general ethnically cleansing Greek Cypriots from the Turkish-occupied area and of applying a policy of apartheid. These policies, as matters of fact, continue in 2010.
17. Similar judicial economy by the Court in *Demopoulos*, in not making any findings as to the Convention consequences of Turkey's implantation of large numbers of Turkish settlers in northern Cyprus, of her allocation of possession or ownership of Greek Cypriot-owned land to them and of her policies of ethnic cleansing and of ending any Greek Cypriot influence in northern Cyprus also deprived the Committee of Ministers of guidance. Those matters had extensively been put to the Court in Cyprus's February 2009 Written Comments and in her October 2009 Memorial, as well as in her oral address at the hearing on 18 November 2009. Nonetheless, though avoiding making findings on these issues due to its policy of economy, the Court could not, in these grave circumstances, altogether avoid commenting on the facts. It escaped from this dilemma by observing that, both in the general context and in the context of the applications, there were "numbers of Turkish settlers" (para. 10) and that "Turkish settlers from Turkey have arrived in large numbers and established their homes" (para. 84).

**(b) The resulting task for the Committee of Ministers**

18.

18. The Court's economical policy makes it essential for the Committee of Ministers to decide whether the general and individual measures taken by Turkey will in the current situation and for the future preclude violations of the character found in *Cyprus v. Turkey*.<sup>12</sup>

19. It will be recollected that, concerning the Karpas Greek Cypriots, the relevant Articles violated were Articles 3 and 8 and Article 1 of Protocol No. 1 concerning peaceful enjoyment of possessions upon their permanent departure and also the inheritance rights of their relatives. In relation to displaced Greek Cypriots, the relevant violations were of Articles 8<sup>13</sup> and Article 1 of Protocol No.1. The Court's rulings in *Cyprus v. Turkey* – and later judgments – make it clear that discrimination (whether under Article 14 or under Article 3, where it must reach a level of severity) constituted a similar complaint (or a complaint of the same character) as regards the violations which the Court had already found of Articles 8 and 13 and Article 1 of Protocol No.1. This appears from the Court's reasoning that separate examination of complaints of discrimination under Article 14 and Article 3 were unnecessary because those complaints "amount in effect to the same complaints, albeit seen from a different angle" (paras 199 and 203).

**(c) Discriminatory conduct by Turkey under the Convention still needs to be assessed**

20. The Government of Cyprus has made comments to the Committee about both direct and indirect discrimination regarding property rights of enclaved persons (see Records, CM/Del(Act/DH(2009)1065 final of the meeting of 15-16

<sup>12</sup> As indicated in para 5 above, the Committee of Ministers when seized with supervising the execution of the judgment in *Cyprus v. Turkey* has to decide whether or not individual measures have been taken to ensure that the violations of the Convention have ceased, and whether general measures have been adopted preventing new violations similar to those found, with an end being put to continuing violations. The Committee's duty is not confined to precluding commission of the precise violations found, but extends to precluding similar violations.

<sup>13</sup> See para 11(f) above, explaining that the Court in *Cyprus v. Turkey* raised this under the part of its judgment regarding Displaced Persons (paras 162-177), but considered the issues and made findings under the part dealing with living conditions of Greek Cypriots in northern Cyprus i.e. in the Karpas (see paras 281-301). Its Holding III.12 covers Greek Cypriots living in the Karpas AND all displaced persons who are Greek Cypriot.

September 2009). Earlier, following the 1051<sup>st</sup> DH meeting (17-19 March 2009), Cyprus, on 8 April 2009, submitted to the Secretariat for circulation to the Committee a Further Memorandum on Property Issues concerning Enclaved Greek Cypriots pursuant to the Court's findings in *Cyprus v. Turkey* together with a comprehensive Annex, explaining the non-conformity with the Convention of the system proposed by Turkey. That Annex (at pp.28-44) inter alia explained why Turkey's proposed remedial system and the "TRNC Laws and decisions" violated Articles 14 and 3 of the Convention. Committee members who wish to read those materials – so as to understand the mechanisms employed by Turkey to implement her unlawful and discriminatory policies while at the same time concealing their real import – can obtain copies from the Republic of Cyprus's Mission. That Annex covers the complex legal issues in detail. Members of the Committee may wish to refer it to the International and Human Rights Law sections in their Foreign Ministries for guidance and confirmation of the analysis therein. It appears that the Secretariat may have received the Further Memorandum and Annex too late to take full account of the reasoning therein when it was preparing the Secretariat assessment for the Committee's September 2009 meeting.

**(d) The relevance of Turkey's conduct simultaneously being in breach of International Law**

21. This Memorandum has already referred to recent developments about the complementarity of human rights law and humanitarian law and the necessity for interpreting the Convention in light of humanitarian law covering the same facts and issues. The international criminality of acts implementing Turkey's continuing discriminatory policies and policies of ethnic cleansing, apartheid and settlement of parts of her own civilian population from Turkey is relevant. Those Turkish policies not only violate regional human rights law under the European Convention, but they may also violate international human rights law and international humanitarian law<sup>14</sup>. It would be an extreme paradox were

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<sup>14</sup> Ever since the International Court of Justice's Advisory Opinion in the *Construction of a Wall* case, ICJ Reports, 2004, 136, and the contentious proceedings in *Democratic Republic of the Congo v. Uganda*, ICJ Reports, 2005, 168, it has been clear that international human rights law (which includes the Convention) and international humanitarian law both apply where a State exercises jurisdiction in foreign territory (as Turkey does in her military occupation of northern Cyprus): *Wall* case, pp 178 ff.

the Committee of Ministers to uphold Turkish measures (taken by its subordinate local administration, the "TRNC") as precluding violations of human rights while the very "Laws" exonerated by the Committee, could prove Turkey's intentional and systematic policy of wide-spread institutionalized racial targeting, of seizure of property and of facilitating transfers of part of her civilian population to territory she occupies in northern Cyprus. The International Criminal Court could, if seized of the same facts, rule that these evidenced acts constituting crimes against humanity and war crimes.

## V. A MORE DETAILED LEGAL ANALYSIS OF WHY THE SPECIFIC "LAWS AND DECISIONS" ARE SERIOUSLY NEEDED

### (a) Proof of discriminatory policy and acts by Turkey

22. Elements proving Turkey's unlawful discriminatory policies in occupied Cyprus appear in the "Laws and decisions of the TRNC" supplied by Turkey in Cyprus v. Turkey.<sup>15</sup> Further proof appears in "Law 41 of 1977", which, as already

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Moreover, since 1 July 2002, the International Criminal Court has had jurisdiction over crimes against humanity and war crimes committed by individual persons, most of whom will be planners, organisers, aiders and abettors of the crime and will normally be public servants of a State pursuing policies systematically directed against any civilian population e.g. persecution on racial or ethnic grounds, or apartheid, or unlawful and wanton appropriation of property, or transfer by an Occupying Power of parts of its civilian population into occupied territory.

<sup>15</sup> e.g. "Immovable Alien Property (Control and Administration) Law No.32 of 1975" and "Immovable Alien Property (Allocation and Utilisation) Law No.33 of 1975". Turkey has admitted to the Committee that both "Laws" are still in force, but claims they are "redundant" (i.e. irrelevant) - this on the strength of a tendentious translation and interpretation of "Article 4(1) of the Settlement, Land Allocation and Equivalent Property Law No.41 of 1977" (now disingenuously re-named "The Housing ... Law"). In reality, what "Article 4(1)" does is to place immovable property of non-resident aliens (i.e. Greek Cypriots and Greeks) under the control and disposal of the "Ministry in Charge of Improvement, Settlement and Rehabilitation Affairs", rather than that of the "TFSC Ministry of Finance". "Article 4(1)" also authorizes appropriation to "holders of a right", but the "1975 Laws" continue to provide the foundation and framework for the "1977 Law" empowering "TRNC authorities" to control and dispose of Greek Cypriot property for allocation and utilization for re-settlement, residence, tourism, agriculture, development etc. Greek Cypriots are not eligible to benefit from such allocation of rights of utilization. Turkey has told the Committee that it is "Article 159(1)(b) of the 1985 Constitution" which "operates on the basis of abandonment of properties", and not "Laws No.32/1975 and No. 33/1975" (DD(2007) 538, 11 October 2007, Comments, para 2, sub-para 3). This is untrue. "Law 32/1975" is entitled "A Law to consolidate and amend the Law with regard to the control and administration of the immovable property belonging to aliens and abandoned within the territory of the Turkish Federated State of Cyprus". Its section 2 defines immovable property as belonging to non-resident aliens or property which has "been abandoned". That definition (with its reference to "abandoned" property) is adopted in "Law 33/1975 section 2". Just 2 months earlier, "Law 39/1975" was passed: this was "The Abandoned Movable Property (Collection and Control) Law." "Abandonment" of aliens' property was the core concept underlying all three "Laws". As indicated, it is on the foundation of the 1975 "Laws" that "Law 41 of 1977" was adopted, while "Article 159 of the TRNC Constitution 1985" was itself based on the framework of the 1975 "Laws" and on the vesting of possession of "abandoned property" under those

indicated, Turkey first supplied to the Committee only in the Turkish language (apart from section 3, translated into English). Under pressure, she has translated 8 more sections, so that the Committee now has 9 (out of nearly 120 sections) in a language comprehensible to it. Only through diligent scrutiny by a Turkish-speaking lawyer (scrutiny and research which busy Committee members are unable to undertake) can Turkey's discriminatory policies be proven, unless the Republic of Turkey admits them.

23. Some Committee members may believe that the Republic of Turkey was and is innocent of devising and implementing the policy of seizing and distributing Greek Cypriot-owned land, giving ownership to Turkish Cypriots, war veterans, soldiers of the Turkish Peace Operation and Turkish settlers, and thus deserves sympathetic exemption. Far from being uninvolved, with the violations being the responsibility of the "TRNC," Turkey directly required the "TRNC" to change "Law 41 of 1977" and offered financial support for this. She effected her policy by way of an "Economic Protocol" system with the "TRNC," making all Turkey's massive financial aid conditional on "TRNC" compliance. That system was first publicised in 1982, when the 1982 "Protocol" was the cause of "Law 27 of 1982". The texts of the "Protocols" of 1986, 1990 and 1992 also provided for the amendment of the "1977 Law" and for extending the criteria for allocation of property to Turkish settlers. All this was evidenced to the Commission and the Court in *Cyprus v. Turkey*. Indeed, in the Commission's Admissibility Decision, dated 28 June 1996, the Commission, at p.156, fully set out Turkey's direct involvement and the provisions she insisted upon to speed up application of the "1977 Law" and to make amendments. The Commission and Court were further alerted to Turkish dictation of land distribution and ownership policy by Cyprus's Observations on the Merits in 1997. Such illegal Turkish conduct is perhaps best shown in the 13<sup>th</sup> Joint

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"Laws" in the "TRNC's Ministry" charged with settlement, rehabilitation and development. In yet another re-naming (dropping references to "Settlement"), this was given the appellation "Housing Ministry" in order further to obscure its real function of controlling and allocating Greek Cypriot-owned property to settlers and Turkish Cypriots, usually on long-leases if the "Ministry" had decided not to dispose of the "TRNC" ownership "rights" acquired by virtue of "Article 159". Nonetheless, allocations of "ownership" still occur when Greek Cypriot-owned land becomes available for any reason e.g. due to departures of Greek Cypriots of the Karpas.

Economic Commission Protocol of 25 September 1994 (preceding and the cause of "Law 52 of 1995"). Paragraph 79 stipulated that

"79. TRNC will rapidly make the necessary legal adjustments in order to complete the implementation of the law related to housing and equivalent property allocation, with the aim of solving the problem of ownership. Turkey will offer the necessary support."<sup>16</sup>

**(b) Why "Law 27 of 1982" is needed as evidence of Turkey's policy**

24. Buried in the consolidated and largely untranslated text of "Law 41 of 1977" are the provisions of "Law 27 of 1982". Turkey has declined to provide this "Law" – even in the Turkish language. Such "Law", assuming it were to be translated so as to be comprehensible to the Committee, would disclose Turkey's policy of committing the war crime of transporting part of her civilian population to the territory of occupied Cyprus and of settling such persons on Greek Cypriot – owned land with grants made under "Council of Ministers' regulations". Thus "Section 2(b) of the "1982 Law" provided for grant of immovable property to Turkish Peace Operation members with "discharge papers". "Section 2(f)" provided for "wounded" or "deceased" soldiers and their families to get property of Greek Cypriots and benefits. "Section 2(2)" gave members of the Turkish Peace Forces "points" so as to be able to claim property. "Section 6A" (omitted from the "1998 consolidation") empowered the Council of Ministers to expropriate Greek Cypriot-owned property. Other "sections of Law 27 of 1982", namely what is now "Section 24.3" of the consolidated "Law", provided for the appropriation of dwellings and workshops to "invalid soldiers," while "section 25.2(a) and (c)" gave priority in allocation to disabled veterans and members of the Turkish Peace Forces who occupied Cyprus in mid-1974. In the consolidated "1977 Law" (which has only in small part been translated) "refugees" (defined to include settlers, who are given "citizenship" after a year, but only with Turkey's consent – matters which appear only from other unsupplied "Laws") are given top priority in distribution of Greek Cypriot-owned land (see current "section 13(1)(a)"). Moreover

<sup>16</sup> See Cyprus's Observations on the Merits, 7 February 1997, pp 33 et seq and Appendices to Observations on the Merits, Vol. III, pp.228-238, at p.235.

"refugees who came from abroad and settled in can be supported by provision of aid in kind and in cash" (see "section 31").

Such "refugees" have had and still would have priority in being allocated land of departing or deceased Greek Cypriots of the Karpas and indeed throughout the Turkish occupied area whenever Greek Cypriot-owned property for any reason again comes into the possession of the "Housing Ministry".

25. "Law 27 of 1982," dictated by Turkey in the 1982 Protocol, also provided for ownership rights such as mortgaging Greek Cypriot-owned property [to Turkish Banks] to raise credit. Persons allocated Greek Cypriot-owned land would from that time now operate under a specially devised system in effect, but not in name, giving them title.<sup>17</sup>

**(c) Need to establish continuing discrimination by Turkey**

26. Reverting to the issue of discrimination (which, as already indicated, may, depending upon the particular facts, constitute the crimes against humanity of persecution against any identifiable group on racial, national or ethnic grounds, or of apartheid as set out in the Statute of Rome), it needs to be established that Turkey continues to discriminate against Greek Cypriots and Greeks – both by misappropriation and exercising control of their property and by fresh interferences, as well as by discriminatory measures and procedures (such as those in "Law 67/2005" requiring the "Immovable Property Commission" to apply the principle of bi-zonality to ensure that land in the Turkish-occupied area is predominantly Turkish Cypriot-owned). This

<sup>17</sup> "Law 27 of 1982", if provided and translated, would show how "holders of a right" (which term includes ex-Peace Force members and Turkish settlers) were given "Definitive Possession" with certificates which "shall be considered as the Title-Deed", giving the rights recognized to immovable property owners. (See consolidated "Law, sections 71 and 81".)

Moreover, the "1982 Law," in what became "section 90" (but was "amended" in 1995), provided for all persons residing in the "TRNC" (i.e. including all settlers) to be given "an immovable property that could provide income" which was to be in addition to their dwelling. "Priority" and speed was to be given for distribution of such resources (i.e. Greek Cypriot-owned property). In 1995, by "Law 52/1995 section 13, new section 95," (the whole "Law" being declared illegal by the Court in Cyprus v. Turkey, at para 186) certificate holders who had obtained a dwelling and resources were obliged to apply to the title "Deed and Land Registry Office", and to request "proprietorship/ownership" on pain of losing their rights. Such "Laws," and certainly not their relevant "sections" in translation, have not been provided to the Committee. Had they been provided, the illegal land-grab, dictated by Turkey herself, would have been glaringly evident. The violations involved are continuing ones.



discrimination is required to be given practical effect by virtue of the definitions of "alien" or "foreigner" contained in "Laws 32 and 33 of 1975, section 2" and "Law 41 of 1977, section 3". Thus the latter "Law" stipulated that foreigner means [not "involved", as in Turkey's translation]

"Greeks of Cypriot and Grecian origin, companies ... established by them ... [and] it also means subjects of other States or of any national origins that shall be defined as "foreigners" by a decree issued by the Council of Ministers".<sup>18</sup>

Once prima facie established, it is for Turkey to rebut any provisional findings by the Committee of discrimination and to prove to the Committee's satisfaction that there is no discrimination.

**(d) Why the "decisions" are the best and clearest evidence of discrimination**

27. Although in 1975 "abandoned immovable properties" belonging to some foreign nationals of third States were vested in the "TFSC," the "authorities of the TFSC" exempted most foreign nationals other than those of Cypriot or Grecian origin. This reinforcement of Turkey's discriminatory policy needs to be established by production of the "decrees" and "decisions" of the "TFSC/TRNC Council of Ministers" defining or exempting "foreigners". All the Committee has been given are 2 decisions, namely, No.518 of 2008 and a decision of 8 August 2002 (revised by No.518/2008). Turkey has refused to produce other "decisions or decrees" and their translations. That third State nationals and their property rights were differentially treated from Greek

<sup>18</sup> "Section 3 of Law 41 of 1977". "Aliens" in "Laws 32 and 33, section 2 of each Law" means the citizens of the Republic of Cyprus who are not citizens of the TFSC or members of the Turkish Cypriot Community; citizens of the Greek Cypriot Administration, persons of Greek origins and ... bodies ... set up ... by such persons ... [T]he Council of Ministers may, by order ... declare any other foreign nations, or persons of other national origins, to be deemed to be "aliens" for the purposes of this Law or exempt them from the category of aliens".

All immovable property belonging to non-resident aliens, or which is "abandoned", is, by "Law 32/1975, section 4", deemed to be under the possession of the "TFSC Ministry of Finance", which was given the powers of an owner except for transfer of ownership. By the "1977 Law" the relevant "Ministry" became that of "Improvement, Settlement" etc and, by 1989, it was re-named "Ministry of Housing". By practice, ordered by the "TRNC Prime Minister" from 1989 onwards, and then under "Law 52 of 1995," title deeds conveying ownership were to be given, while "holders of a right" were required to apply for title deeds – see n.17 above.

Cypriots is of course corroborated by "Section 59A of Law 41 of 1977" ("section 31 of Law 27/1982"). By that "section" (not translated for the Committee) citizens of third States who had mortgage or current liability rights on immovables belonging to Greek Cypriots could register for protection of their rights.<sup>19</sup> From "section 91 of Law 41 of 1977" (enacted by "Law 52 of 1995") it is also evident that foreigners, other than Greek Cypriots could, through the "TRNC Courts", reclaim properties bought by them before 1974, with the outcome that the "TRNC" would compensate and give other dwellings and immovable property to Turks who had earlier been allocated reclaimed property. The "holders of a right" - being Turkish Cypriots and Turkish settlers who come under the definition of "refugee" – would then be allocated other Greek Cypriot-owned property.

28. It is crucially important that the Republic of Turkey provide the "Laws and decisions" which the Government of Cyprus, supported by the Committee, has repeatedly requested. Only when "section 3 of the Housing [Settlement] ... Law" is read together with the "Council of Ministers' decrees" defining "foreigners" and with "sections 5, 6, 6A, 71, 71A, 72B, 80, 81,90 and 95" (all untranslated) and account is taken of what persons are defined as "refugees", will it be obvious to non-lawyers that the provisions are discriminatory, being designed to achieve ethnic cleansing of Greek Cypriots and to transfer their property to Turkish Cypriots and Turkish settlers.

**(e) The onus of showing cessation and preclusion of violations rests on Turkey**

29. This Memorandum does not further expatiate on why other "TRNC Laws" should be supplied to the Committee. It would be repetitive exhaustively to analyse each "Law" for corroboration of Turkey's discriminatory policy. More significantly, the onus rests on Turkey to show that "TRNC Laws" do not discriminate regarding property. The Commission submitted three Reports (in 1976, 1983 and 1999) concluding that such "Laws" discriminated and pursued

<sup>19</sup> It will be recollected that Turkish Cypriots and Turkish settlers were by "Law 27 of 1982," enacted under Turkish pressure, authorized to mortgage Greek Cypriot owned property. Other mortgagors and owners i.e. third State nationals who owned land, also needed to be given protection (which was certainly not offered to Greek Cypriots) as against mortgages made by "TRNC citizens" and Turkish settlers who had been put in possession of their land.

the aim of Turkicising land ownership. Those conclusions still stand and have never been reversed. Moreover, the Court, certainly so far as concerns the Karpas, found Greek Cypriots were subject to severe discrimination amounting to degrading treatment (Cyprus v. Turkey, paras 302-311). By failing to produce the relevant "Laws and decisions" it must be presumed that Turkey admits their discriminatory character. In any event, it should be emphasized that neither before the Commission, the Court, nor this Committee has Turkey denied discrimination. Nor has she given proof or argument to show that "TRNC/TFSC" property "Laws" are not discriminatory.<sup>20</sup>

30. Adopting an economical approach akin to that of the Court, this Memorandum does not analyse other violations by Turkey of International Law rules which are jus cogens, such as Article 46 of the Hague Regulations of 1907 which provide that "private property must be respected" by an Occupying Power and which stipulate "private property cannot be confiscated". Nor does it deal with violations simpliciter of Article 1 of Protocol No.1. This is because, according to the Grand Chamber in Demopoulos,

"The Turkish Government no longer contested their responsibility under the Convention for the areas under the control of the "TRNC", and ... they have, in substance, acknowledged the rights of Greek Cypriot

<sup>20</sup> Turkey's attitude towards the Republic of Cyprus's claim that the legislation is discriminatory is manifested in her Memorandum on Property Issues concerning Greek Cypriots in Karpas, 6 May 2009, paras 43-50. Her answer is that "South Cyprus" (the Greek Cypriot side) discriminates. Turkey gives a distorted account of the Republic of Cyprus's Law No.139/1991 and ignores the existence of domestic remedies. However, in the small print of her Memorandum, Turkey asserts that the 1977 and 1979 High Level Agreements in inter-communal negotiations

"implied that there would not be a return to the status quo ante and that there would consequently be permanent displacement. This was the understanding of the United Nations and much of the international community. The agreed principle of bi-zonality, i.e. the creation of two zones within a federation was also endorsed by the Security Council. Bi-zonality means that one of the two zones in a comprehensive settlement is to be predominantly Turkish Cypriot in character both in terms of the composition of its population as well as in terms of the ownership of private property. Some reallocation of private land ownership will be necessary to create a zone with a predominantly Turkish Cypriot population" (emphasis added).

This is an admission that Turkey's policy is creation of a Turkish Cypriot zone with ownership of private property in that zone being "predominantly Turkish Cypriot". That policy is "the purpose" of "Law 67 of 2005" which regulates the "Immovable Property Commission", directing it "to protect bi-zonality". ("Section 3," which is transmogrified into specific restrictions in "Section 8," governs the "Commission's" decision-making on claims concerning immovable property expropriated under "Article 159.1(b) of the 1985 Constitution" i.e. "abandoned property" which is all owned by Greek Cypriots and Greeks.)

owners to remedies for breaches of their rights under Article 1 of Protocol No.1. This acknowledgment underlies the provision of the IPC mechanism".<sup>21</sup>

That "underlying acknowledgment," together with some moves by Turkey<sup>22</sup>, led the Court to conclude that there was

<sup>21</sup> Demopoulos v. Turkey, para 108. There has so far been no explicit acknowledgment by Turkey of her violations and responsibility. Nor is there any mechanism for Turkey's responsibility to be found: she is not subject to the jurisdiction of the "IPC". Findings of responsibility of a State are not within the IPC's remit.

<sup>22</sup> In 2003, after the 2001 Cyprus v. Turkey judgment, Turkey began attempting to provide remedial measures. She abortively procured enactment of "Law 49 of 2003" and the Turkish Army and "TRNC authorities" opened a few crossing points across the buffer zone, thereby enabling Greek Cypriots to enter the "TRNC". After the Chamber in Xenides-Arestis v. Turkey (Application No. 46347/99, Admissibility Decision, 14 March 2005) concluded that "Law 49 of 2003" could not be regarded as an effective or adequate means for addressing complaints regarding negation of Greek Cypriots' property rights, Turkey procured enactment by the "TRNC Assembly" of "Law 67 of 2005". Implicitly, she and the "TRNC" ceased to assert that Greek Cypriot-owned land had been confiscated or expropriated and emphasized that, although there had been transfer to the "TRNC," there was now a compensation mechanism with a possibility (very exceptionally) of restitution and re-transfer. A collusive action followed and resulted in a "judgment of the TRNC Constitutional Court in Case 3/2006" on 21 June 2006. This ruled that "Article 159 of the 1985 Constitution" must be interpreted "by means of reconciling it with International Law rules" (*ibid.*, p.49). It was the "TRNC Court's view that if "Article 159" was read without taking into consideration International Law,

"it could be concluded that the properties of the person are nationalized because of his race or use of his freedom to travel or due to his absence. When saying due to his race it is clear from the definition sections of the legislations numbered 32/75 and 33/95 (Article 159 of the Constitution also means the same) that it includes Cypriot Greek people and people from Greece. It is clear that such an interpretation is not compatible with the related articles of the Conventions which are undoubtedly International laws today" (*ibid.*, p.48, emphasis added).

The Demopoulos Court regarded these moves by Turkey as steps to eliminate administrative practices found by the Commission and Court of not allowing entry of Greek Cypriots into northern Cyprus and regarding the legislation and practice vis-à-vis interference with property rights (para 90). The Court explained that in its view

"That situation has changed. There is now legislation which seeks to provide a mechanism of redress and which has been interpreted so as to comply with international law ... and the political climate has ameliorated, with borders to the north no longer closed" (para 90).

It remains to be seen in future what the administrative practices of the "Immovable Property Commission" will prove to be - especially in light of

- (a) the injunction in "section 3 of Law 67 of 2005" to protect "bi-zonality" and to apply the "Law" "without prejudice to any property rights or the right to use a property under TRNC legislation"; and
- (b) the "TRNC Constitutional Court's" ruling that "Law 67 of 2005", Articles 3 and 8(1)" "limited returning the property owned before 1974 to the Greek applicant with the conditions of inter alia not spoiling the two-part system [bizonality/apartheid]" and only freeing "property not assigned to anyone" ("Case 3/2006," p.50).

**The situation thus is crystal clear that "legislation" institutionalizing the interferences with Greek Cypriot owners' rights in favour of "TRNC citizens" and settlers must, according to "Law 67 of 2005" and the "TRNC Constitutional Court," therefore remain in operation ". It is also clear that Greek Cypriots have no right whatsoever under "TRNC laws" to enter or remain upon property they own, in contrast with a new right "to enter the TRNC" for up to 3 months.**

"an accessible and effective framework of redress in respect of complaints about interference with the property owned by the Greek Cypriots. ... [However] [T]he Court's ultimate supervisory jurisdiction remains in respect of any complaints lodged by applicants who, in conformity with the principle of subsidiarity, have exhausted available avenues of redress".<sup>23</sup>

Applicants' duty to exhaust the remedy of the "IPC mechanism," as found by the Court in Demopoulos, has no application to discrimination or to inhuman treatment under Articles 14 and 3, because the "IPC" has no jurisdiction to deal with such issues. In contrast, the Committee of Ministers, charged with ensuring that violations have ceased and that "similar violations" are precluded, has both jurisdiction and the responsibility for ensuring an ending of discrimination and inhuman treatment and that implementation of discriminatory policy and "Laws" requiring acts constituting such violations are terminated.<sup>24</sup>

**VI. CONCLUDING REQUEST TO THE COMMITTEE TO REITERATE ITS CALL TO TURKEY TO PRODUCE RELEVANT "LAWS AND DECISIONS"**

31. So that the discrimination underlying Turkey's land policy in the Karpas and throughout the Turkish-occupied area is established beyond reasonable doubt by Turkish documents, and not merely by the Cyprus Government's analysis and assertions, the Committee is requested again to require Turkey to provide the relevant "Laws, decisions and decrees of the TRNC/TFSC," particularly the "decisions and decrees" under "Law 41 of 1977, Laws 32 and 33 of 1975," and "Law 27 of 1982," with all being submitted both in the Turkish language and in English translation. Likewise, the full and final text of "Law 41 of 1977" still needs to be supplied in translation.

<sup>23</sup> Ibid., paras 127-128.

<sup>24</sup> See n.22 above, last para, on the continuation in operation of "TRNC legislation" conferring property or use rights on Turkish Cypriot citizens" and "Turkish settlers in respect of Greek Cypriot-owned property, and on the continuation in force of exclusion of Greek Cypriots from property they own in the occupied area, unless they are permitted to enter such property by the new Turkish Cypriot or Turkish owner or occupier.