Cyprus Property Claims and Judgments*

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Since the monumental 1998 judgment of the European Court of Human Rights (ECHR) in the case of *Louizidou vs. Turkey*,[1] the lands and properties of Cypriot refugees and displaced persons have come streaming before European courts. That precedent-setting case resulted in the Turkish government's payment of over $1 million in compensation to the property owner deprived by prolonged occupation. Turkey also has evacuated her house in order to return it to her; however, Ms. Loizidou has elected not to return, as she claimed that Turkish-occupation troops make her return unsafe. The Court accepted her claim, resulting in Turkey's continuous payment of compensation for denying her the right to enjoy her property.[2]

The accumulated outcomes of this and other Cypriot property claims have raised hope for various forms of reparation for the continuum of gross violations that resulted from the 1974 Turkish invasion and occupation of the island. The military coup in Greece that year, the resurgence of the extreme ethnonationalist Greek *enotist* (unionist) movement on Cyprus and the prospect of a repeat of the 1963 massacres of Turkish Cypriots gave impetus to the Turkish Republic to extend a protective presence in the northern 47% of that independent binational country. However, that 1974 invasion soon transformed into occupation with establishment of Turkey's prolonged military presence and the establishment, in 1983, of the self-proclaimed Turkish Republic of Northern Cyprus (TRNC).[3]

The legal status of the Turkish Republic of Northern Cyprus has been a bone of contention for previous property cases appearing before the European court, since it is not an internationally recognized state. However, it has been established in admissibility decisions[4] that Turkey is the respondent state for property claims.

Hope rose also for Turkish-Cypriot property claimants after decades of real-estate limbo for Turkish Cypriots as the Greek Cypriot government ceded a case in the European Court of Human Rights involving a plaintiff from the northern side of the divided island. In 2010, Greek Cyprus agreed to pay 84-year-old Nezire Sofi compensation worth €500,000 euros, admitting that its laws governing Turkish Cypriot property rights contravened the European Convention on Human Rights.

At the time of the Sofi ruling, January 2010, ten other suits filed with the European court were already waiting. "This is a historic week for us," said Aslı Aksu, a lawyer defending a similar case known as the Chakarto case.[5]

The European Court has received numerous applications because of violations related to properties on both sides of the divided island. A 1975 Population Exchange Agreement, enforced by external powers,[6] transferred some 65,000 Turkish Cypriots to the north, while some 160,000 Greek Cypriots were forced to move to the south.

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* Cite as: Joseph Schechla, "Cyprus Property Claims and Judgments," in Housing and Land Rights Network (HLRN), *The Land and Its Peoples: Civil Society Voices Address the Crisis over Natural Resources in the Middle East/North Africa* (Cairo: HLRN, 2015), pp. 247–53, at: http://www.hlrn.org/publication_det.php?id=o2ps#.VXHh52eJgqQ.

The Turkish-occupation administration distributed abandoned Greek properties to Turkish internally displaced persons (IDPs)/immigrants who agreed to file a disclaimer for their real estate in the south. Meanwhile, the Greek-Cypriot administration established a Turkish-Cypriot property management department under its Guardian Law, forbidding all Turkish Cypriots to dispose of their estates until the island's reunification, regardless of whether they renounced their rights. The (Turkish) northern Cyprus administration actually disadvantaged future property claimants from the north by forcing the IDPs/immigrants to sign a release in order to obtain new properties.

That practice left only those Turkish Cypriots who rejected the agreement to be eligible to sue the Greek-Cypriot administration for restitution and other forms of reparation. The Chakarto application, seeking €7 million, was supposed to be a test case. However, that bid was not as successful, as the ECHR judges rejected the joined applicants for nonexhaustion of domestic remedies.

Another Greek-Cypriot property claim before the ECHR formed a watershed in addressing the numerous claims of southern claimants following *Loizidou*. Mrs. Myra Xenides-Arestis is a Greek-Cypriot living in Nicosia, the capital of Cyprus. She owns land, houses and a shop in northern Cyprus, but has been prevented from living in her home or using her property since August 1974 as a result of the continuing division of the island. Mrs. Xenides-Arestis presented her application to ECHR on 4 November 1998, and the Court ruled in her favor at the end of 2005.[7] The Court awarded Ms. Xenides-Arestis €65,000 for legal costs and expenses, with damages to be determined in a later proceeding.[8] However, the most significant aspect of the decision was the Court's position requiring Turkey to address the property-claims issue in a more systematic way.[9]

The Court, abiding by the decision taken in 2001 in the *Cyprus vs. Turkey* case,[10] determined that the respondent state must introduce a remedy that secures genuinely effective redress for the European Convention violations. The Court then ordered Turkey to introduce a remedy securing the effective protection of the rights provided in Article 1 (protection of property) of the First Protocol to the European Convention on Human Rights, as well as Article 8xvii of the Convention (right to a home), not only for Ms. Xenides-Arestis, but also for all similarly situated Greek-Cypriot plaintiffs with some 1,400 pending property compensation claims before the ECHR.[11]

Immovable Property Commission

Following the rulings of the ECHR in the cases of *Loizidou v. Turkey* and *Xenides-Arestis v. Turkey*, the European Court decisions led to the Turkish administration in northern Cyprus setting up the Immovable Property Commission (IPC) by the provisions of the new compensation law to deal with Greek-Cypriot complainants, entitled the "Law for the Compensation, Exchange and Restitution of Immovable Properties" (Law no. 67/2005). Subsequently, only those who cannot find a solution via the Commission were able to apply to the ECHR for remedy.

The Greek-Cypriot administration of the Republic of Cyprus is unhappy with its citizens applying to an institution in the north that it regards as illegal and illegitimate under international law. However, as of February 2015, 780 Greek Cypriots have applied to the Commission, and 768 have received compensation.[12]

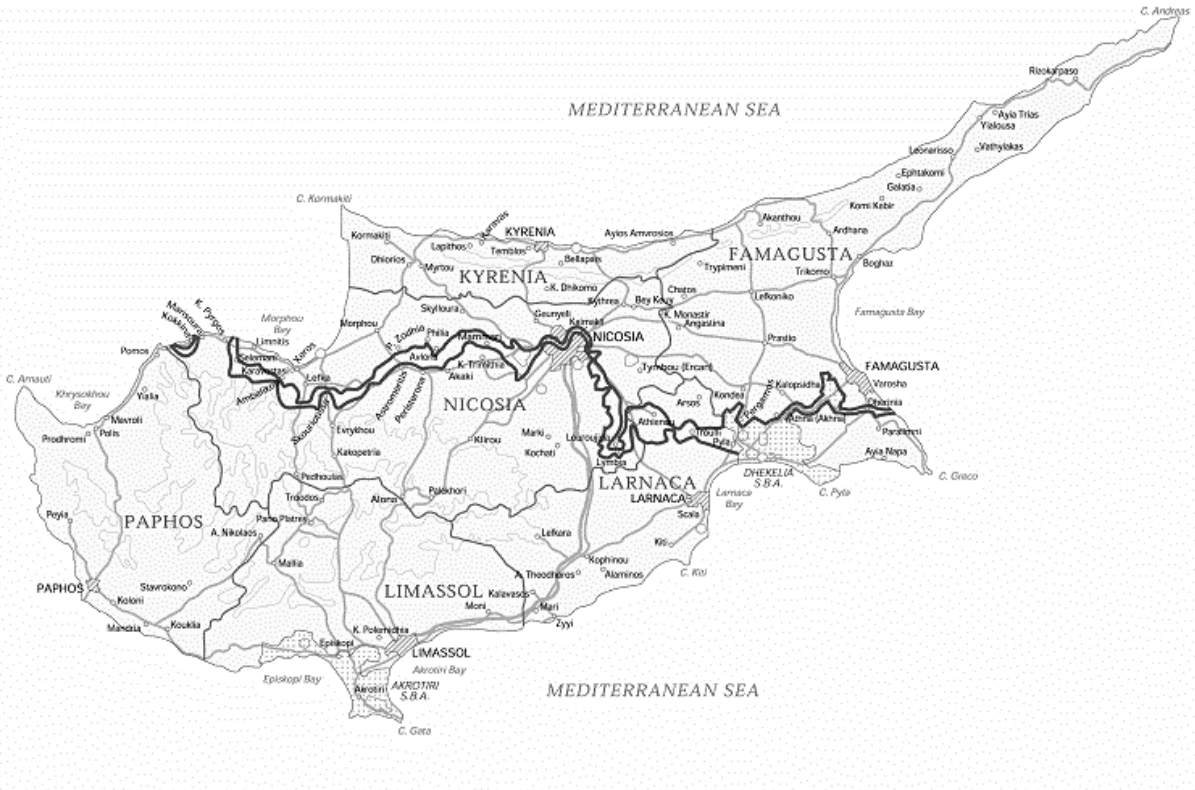
Buyers Beware: Third-party Liability

In 2003, David and Linda Orams an English couple built a "dream retirement holiday home" at Lapithos, near Kyrenia, in occupied northern Cyprus. By so doing, they found themselves embroiled in an international property dispute.

Thirty years after the partition and occupation of Cyprus, and shortly after Cypriots were permitted to cross the island's United Nations-patrolled ceasefire line, British-trained Cypriot architect Meletis Apostolides travelled north and found the Orams living on his property. Thereafter, Mr. Apostolides won an order from the Nicosia District Court, ordering the Orams to demolish their villa and return the illicitly acquired land to Mr. Apostolides. However, since rulings by the Republic of Cyprus courts have no legal force in the TRNC, Mr. Apostolides had the Nicosia rulings registered at the High Court in London under a European Union regulation covering the recognition of foreign judgments. The London Court of Appeal decision required the Orams to demolish their villa in occupied northern Cyprus. That court decision recognized Cypriot refugees' continuous right to ownership and halted the development of Greek Cypriot properties in the occupied north.

In September 2006, the High Court of Justice ruled in favor of the Orams.[13] Mr. Apostolides appealed the decision at the Court of Appeal, which, in turn, referred the case to the European Court of Justice (ECJ), in Luxembourg. The ECJ, in turn, ruled in favor of Mr. Apostolides.

The case was then returned to the Court of Appeal in England, which ruled in favor of the original owner Meletis Apostolides in a final decision on 19 January 2010.[14] Reportedly, in the same year, the Orams' abandoned the property rather than demolish it.[15]



Rights in Balance

After 1974, the Republic put all Turkish Cypriot properties under the guardianship of the Interior Minister, who prohibits their sale, exchange and transfer during the continuing state of emergency. However, without following proper expropriation procedures, the Republic took large expanses of Turkish Cypriot-owned land for development projects and for refugee estates.

For example, the whole of the old Larnaca Airport and a part of the new one are constructed on Turkish-Cypriot land. The owner of the land is a citizen of the Republic of Cyprus, lives in southern City of Larnaca and has a Cyprus passport and ID card. The government has been paying him a reportedly ample monthly allowance as part of its efforts to persuade him not to claim his property in the courts.[16]

Despite the Law of the Guardian, which froze all transactions of Turkish Cypriot-owned properties and prohibited restitution, part of the settlement reached with Sofi Nezire includes the written undertaking by the Cyprus Republic to amend the Guardian Law, so as to allow all Turkish Cypriots living outside Cyprus or in the unoccupied areas, to reclaim their properties. At least 100,000 Turkish Cypriots are registered citizens of the (unoccupied) Republic of Cyprus. A large number of them live in England, with access to European courts, whose judgment have legal force in the Republic.

The seeming trend of the courts to rule in favor of restitution for gross violations of housing, land and property rights in Cyprus took a more-nuanced direction in March 2010, when the ECHR Grand Chamber decided to reject the applications of seventeen Cypriot citizens against Turkey as inadmissible. The applicants alleged Turkey's violations of the European Convention of Human Rights, in particular, to the right of property, under Article 1 of the First Protocol to the European Convention on Human Rights, as well as the right to the home, under Article 8 of the Convention.

The Court's decision in *Demopoulos and Others v. Turkey* turned on examination of the applicants claims. After 14 years of adjudication on property claims in occupied Cyprus, the Court found the IPC property claims process set up in Turkish-controlled northern Cyprus to constitute an effective domestic remedy. The decision also requires Greek Cypriot applicants to demonstrate that they have exhausted this remedy before making admissible applications to the Court.[17]

The broader significance of the *Demopoulos* decision, however, concerns the issue of property rights in an occupied territory, especially where the occupation is prolonged, in this case lasting several decades. The Grand Chamber declared the case inadmissible, in effect rejecting the claims of the Greek Cypriots, ordering them to exhaust their domestic remedies by using the mechanisms set up in northern Cyprus to adjudicate property claims and award compensation.

In response to the applicants claim that seeking redress through a TRNC institution would be counter to their interests, the Grand Chamber said that it was "not persuaded that the acknowledgement of the existence of a domestic remedy runs counter to the interests of those claiming to be victims of violations." The panel of judges added that it

> acknowledges the strength of feeling expressed by some of the applicants. However, the argument that it would be galling to have recourse to authorities in northern Cyprus cannot be given decisive weight against the background of conflict and hostility, similar argument might be raised in respect of any official body or authority on the Turkish mainland, or indeed by any victim of a violation who is faced with the prospect of asking for redress from a State which has been responsible for the injury suffered.[18]

As in the past, the Court's principal reference was the European Convention on Human Rights, as would be within the competence of the Court. It made no reference to the other relevant instruments governing the law of armed conflict, and in particular the Fourth Geneva Convention.[19] It also did not invoke the provisions of the Rome Statute or preceding norms that have codified population transfer, including the implantation of settlers and settlements, as war crimes and crimes against humanity. Given the European Convention-based parameters of the Court's competence, the panel was limited in the scope of its ruling, despite recent clarity on the elements of reparation.[20] The decision states:

> Thus, the Court finds itself faced with cases burdened with a political, historical and factual complexity flowing from a problem that should have been resolved by all parties assuming full responsibility for finding a solution on a political level. This reality, as well as the passage of time and the continuing evolution of the broader political dispute must inform the Court's interpretation and application of the Convention which cannot, if it is to be coherent and meaningful, be either static or blind to concrete factual circumstances.[21]

The Court equivocated on whether those whose lands and properties taken by the occupation are subject to restitution by their pre-occupation owners, or only to receive financial compensation for them. According to the Grand Chamber:

> At the present point, many decades after the loss of possession by the then owners, property has in many cases changed hands, by gift, succession or otherwise; those claiming title may have never seen, or ever used the property in question. The issue arises to what extent the notion of legal title, and the expectation of enjoying the full benefits of that title, is realistic in practice. The losses thus claimed become increasingly speculative and hypothetical. There has, it may be recalled, always been a strong legal and factual link between ownership and possession…This is not to say that the applicants in these cases have lost their ownership in any formal sense; the Court would eschew any notion that military occupation should be regarded as a form of adverse possession by which title can be legally transferred to the invading power. Yet it would be unrealistic to expect that, as a result of these cases, the Court should, or could, directly order the Turkish Government to ensure that these applicants obtain access to, and full possession of, their properties, irrespective of who is now living there or whether the property is allegedly in a militarily sensitive zone or used for vital public purposes.[22]

While the Court acknowledged that its case law indicates that, "if the nature of the breach allows *restitutio in integrum*, it is for the respondent State to implement it. However, if it is not possible to restore the position, the Court, as a matter of constant practice, has imposed the alternative requirement on the Contracting State to pay compensation for the value of the property."[23]

According to the Grand Chamber:

> It cannot be within this Court's task in interpreting and applying the provisions of the Convention to impose an unconditional obligation on a Government to embark on the forcible eviction and rehousing of potentially large numbers of men, women and children even with the aim of vindicating the rights of victims of violations of the Convention.[24]

The ruling may bear on many historic claims concerning human rights abuses, particularly if they are taken out of context of other compatible norms and legal regimes. It is also relevant to the law governing occupied territories, although that doctrine, too, invokes liability, third-party responsibility, required "effective measures" and other consequences for grave breaches and codified crimes carried out in the context of war and/or occupation.

Following the *Demopoulos* ruling, external parties have urged the Greek Cypriot Republic of Cyprus to set up a parallel property commission in south Cyprus to help solve one the of most complex aspects of the

Cyprus conflict.[25] This would require a significant shift in the Republic's approach to the property issues, as its Guardian Law is premised on the state serving as custodian of Turkish- Cypriot properties until Cyprus is reunited.

At the time of that proposal, hopes across Cyprus remained low for the prospect of a political solution to the Cyprus problem, let alone the island's eventual reunification. A survey published in 2011 found that, of 1,000 Greek Cypriots polled, 50% would not return to their original homes even in the event of a comprehensive solution, with many respondents explaining they did not want to restart their lives. Most Turkish Cypriots polled were open to a mixture of restitution, exchange and compensation as acceptable remedies to the property problem, with compensation being the most preferred remedy. However, 90% of Greek Cypriots preferred restitution, even where Turkish Cypriots and other third parties lived or used that land for their livelihood. Notably, 61% of those desiring restitution would not move back to North Cyprus if it remained under Turkish administration.[26]

The analogy with other cases of prolonged occupation may be obvious. Comparable polls have found similar ambivalence among refugee populations toward returning to an uncertain political context. The case of Cyprus, among occupations in the Middle East/North Africa region, may compare. However, the Cyprus case remains distinct from Palestine or Western Sahara at least in the fact that the partition of Cyprus, with its complex land and property conundrum, does not involve the denial of self-determination and banishment of refugees from their national territory. Hence, the diverse and case-by-case remedies have produced a rather checkered Cypriot pattern of remedy in recent years, only partly resting on human rights law, while political solutions remain elusive.

Endnotes:

[1] The Case of Loizidou v. Turkey, European Court of Human Rights (40/1993/435/514, at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58007#{"itemid":["001-58007"]}.

[2] "Turkey compensates Cyprus refugee," *BBC News* (2 December 2003), at: http://news.bbc.co.uk/2/hi/europe/3257880.stm.

[3] Kuzey Kıbrıs Türk Cumhuriyeti unilaterally declared its independence on 15 November 1983.

[4] For example, *Loizidou v. Turkey*, in 1995, and *Xenides-Arestis v. Turkey*, in 2005.

[5] *Niazi Kazali and Hakan Kazali against Cyprus* (Application no. 49247/08 and 8 other applications), 6 March 2012, at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109812#{"itemid":["001-109812"]}.

[6] For a discussion of the United States and British former colonial power support of the population-transfer Agreement, see Christopher Hitchens, *Hostage to History: Cyprus from the Ottomans to Kissinger* (New York: Verso, 1984).

[7] *Case of Xenides-Arestis v. Turkey* (Application no. 46347/99), Judgment, 22 December 2005.

[8] "Turkey Compensates Cyprus Refugee," *BBC News Europe* (2 December 2003), at: http://news.bbc.co.uk/2/hi/europe/3257880.stm.

[9] Ali Nezhet Bozlu,"Kibris'ta Mülkiyet Sorunu ve Aihm Kriterleri," at: http://www.turkhukuksitesi.com/makale_561.htm; also cited in Derya Özveri, "Cyprus Property Dispute through the Glance of Immovable Property Commission," *Turkish Studies*, Vol. 8/6 (spring 2013), p. 591–602, at: http://www.turkishstudies.net/Makaleler/1075902759_35%c3%96zveri%20Derya-sos-591-602.pdf.

[10] Ordering Turkey to pay €90,000,000 to the Republic of Cyprus. ECHR, *Case of Cyprus v. Turkey* (Application no. 25781/94) Judgment (Just satisfaction), 12 May 2014, at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144151#{"itemid":["001-144151"]}.

[11] *Cyprus v. Turkey*, (2002) 35 E.H.R.R.

[12] Proceedings of the Immovable Property Commission (2006–2015), at: http://www.tamk.gov.ct.tr/dokuman/Bitenler.pdf.

[13] *Orams v. Apostolides* [2006] EWHC 2226 (QB), [2007] 1 WLR 241, [2007] 1 All ER (Comm) 1 (6 September 2006), High Court of Justice (Queen's Bench Division), case no: QB/2005/PTA/0897.

[14] *Apostolides v Orams & Ors* [2010] EWCA Civ 9, [2010] 1 All ER (Comm) 992, [2010] 4 EG 112, [2010] ILPr 20 (19 January 2010); case No: A2/2006/2114.

[15] "End of the road for the Orams," *Cyprus Mail* (1 April 2010), at: http://cyprus-mail.com/cyprus/end-road-orams/20100401.

[16] Makarios Droushiotis, "Orams Decision Could Open Pandora's Box," Cyprus Mail (14 February 2010), at: http://www.news.cyprus-property-buyers.com/2010/02/14/orams-decision-could-open-pandoras-box/id=003919.

[17] Grand Chamber Decision as to the Admissibility of Application nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04 by Takis Demopoulos and Others, Evoulla Chrysostomi, Demetrios Lordos and Ariana Lordou Anastasiadou, Eleni Kanari-Eliadou and Others, Sofia (Pitsa) Thoma Kilara Sotiriou and Nina Thoma Kilara Moushoutta, Yiannis Stylas, Evdokia Charalambou Onoufriou and Others, and Irini (Rena) Chrisostomou against Turkey [*Demopoulos and Others v. Turkey*], 1 March 2010, at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97649#{"itemid":["001-97649"]}.

[18] Ibid., para. 98.

[19] William A. Schabas, "Property Tribunal in Northern Cyprus is Valid Remedy, Rules European Court of Human Rights, PhD Studies in Human Rights (weblog), 7 March 2010, at: http://humanrightsdoctorate.blogspot.com/2010/03/property-tribunal-in-northern-cyprus-is.html.

[20] "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," A/RES/60/147, 21 March 2006, at: http://www.un.org/Docs/asp/ws.asp?m=A/RES/60/147.

[21] *Demopoulos and Others v. Turkey*, op. cit., para. 85.

[22] Ibid., paras. 111–12.

[23] Ibid., para. 114.

[24] Ibid., para. 116.

[25] "Greek Cypriots Urged to Set up Parallel Property Commission," *Cyprus News Organisation* (17 March 2010), at: http://www.cyprus-news.org/2010/03/17/greek-cypriots-urged-to-set-up-parallel-property-commission/ and http://www.landpedia.org/landdoc/Analytical_materials/Cyprus_dossier_2010.pdf.

[26] Interpeace/'Cyprus 2015' Initiative (2011), "Solving the Cyprus Problem: Hopes and Fears," at: http://www.interpeace.org/publications/cyprus/22-solving-the-cyprus-problem-hopes-and-fears-english/file.