

## **ECtHR - Cyprus v. Turkey , Application no. 25781/94, 10 May 2001**

**Country of Applicant:**

Cyprus

**Date of Decision:**

10-05-2001

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ECtHR - Cyprus v. Turkey , Application no. 25781/94, 10 May 2001

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European Court of Human Rights Grand Chamber

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**Headnote:**

Turkey's continual and severe failure to carry out an effective investigation into the circumstances of disappearance of Greek-Cypriots, who were at the time under the control of its agents, constituted a violation of Articles 2,3 and 5 of the ECHR. The circumscription of freedom of movement, religion and association of Greek-Cypriots in Northern Greece constituted violations of Articles 9 and 10 and the continual violation of Article 1 Protocol 1 by virtue of preventing Greek Cypriot owners from having access to, control and use of their property was also found by the Court.

**Facts:**

In July and August 1974, Turkey conducted a military operation and occupied the northern part of Cyprus.

In 1983, the leader of Turkish Cypriots proclaimed the Turkish Republic of Northern Cyprus (TRNC), and in 1985 the 'TRNC Constitution' was enacted.

In 1981 the United Nations Committee on Missing Persons ('CMP'), was set to draw up comprehensive lists of missing persons of both communities specifying as appropriate whether they were still alive or dead.

The events of July and August 1974 and their aftermath gave rise to three previous applications lodged by Cyprus against Turkey under former Article 24 of the Convention. The first two applications led to the adoption in 1976 of a report under former Article 31 of the Convention in which the European Commission of Human Rights expressed the opinion that the respondent State had violated Articles 2, 3, 5, 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1.

The arguments relied upon by the government and summarised by the Commission related, *inter alia*, to the large scale killing of Greek-Cypriots as well as a high numbers of missing persons; displacement of Greek-Cypriots to the South without the possibility to return to their homes; loss of ownership rights; restriction of movement for minority groups staying in northern Cyprus; eradication of Greek-language secondary schools in the North, and severe and unjustified censorship of primary-school books; restriction of freedom of religion; and acts of discrimination and harassment towards the Turkish Cypriot Gypsy community in northern Cyprus.

The third application lodged by Cyprus led to the adoption of another report in 1983, wherein the Commission expressed the opinion that the respondent State was in breach of its obligations under Articles 5 and 8 of the Convention and Article 1 of Protocol No. 1.

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## **Decision & Reasoning:**

### Preliminary Issues

1) As to the issue of the Cyprus Government standing to bring an application before the ECtHR, the Court reiterated that the Republic of Cyprus has remained the sole legitimate government of Cyprus (as it was concluded in *Loizidou v. Turkey*), and therefore its locus standi under former Article 24 (current Article 33) of the Convention could not be in doubt.

2) As to Cyprus' legal interest in bringing the application, The Court did not deem the complaint raised in the instant application to be *res judicata*.

Indeed, the application was to be distinguished from the earlier applications in that it set out new violations of the Convention, invoked complaints which were not the subject of any definitive finding by the Commission in its earlier reports, and was premised on the notion of continuing violations of Convention rights.

3) As to the respondent State's responsibility under the Convention, the Court held that the matters complained of fell within the 'jurisdiction' of Turkey within the meaning of Article 1 of the Convention and therefore entailed the respondent State's responsibility.

Indeed, the Court reiterated that the responsibility of a Contracting Party could also arise when, as a consequence of military action, it exercises effective control of an area outside its national territory (*Loizidou v. Turkey*). Indeed, any other finding would result in a regrettable vacuum in the system of human-rights protection in the territory in question.

4) As to the requirement to exhaust domestic remedies, the Court held that for the purposes of former Article 26 of the Convention, remedies available in Northern Cyprus were to be regarded as 'domestic remedies' of the respondent State, regardless of the invalidity of the acts of the 'TRNC' authorities from the standpoint of international law. Accordingly, the inhabitants of the territory were required to exhaust these remedies, unless their inexistence or ineffectiveness could be proved. The latter issue of effectiveness was addressed by the Court with regard to each complaint when assessing the merit.

To underpin its conclusion, the Court made strong reference to the Advisory Opinion of the International Court of Justice in the *Namibia* case, where the Court held that international law recognises the legitimacy of certain legal arrangements and transactions in situations of *de facto* authority when ignoring those acts would only be to the detriment of the inhabitants of the territory.

### Substantial issues

#### *A) Alleged violations of the rights of Greek-Cypriot missing persons and their relatives*

1. The Court concluded that there had been a continuing violation of Article 2 on account of the failure of the authorities of Turkey to conduct an effective investigation aimed at clarifying the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances.

The Court maintained that, under Article 2 of the Convention read in conjunction with Article 1, the Contracting States have the procedural obligation of to effectively investigate not only when individuals have been killed as a result of the use of force by agents of the State (*McCann and Others v. the United Kingdom*), but also upon the sole proof that an individual, who was last seen in the custody of agents of the State, subsequently disappeared in a context which may be considered life-threatening, as that which is clearly demonstrated in the present case.

Moreover, the Court affirmed that the respondent State's procedural obligation could not be discharged through its contribution to the investigatory work of the United Nations Committee on Missing Persons (CMP), incapable to meet the standards of an effective remedy under Art. 2. .

2. The Court concluded there had been no breach of Article 4, being of the view that it had not been substantiated that during the relevant period any of the missing persons were still in Turkish custody and were being held in slavery or servitude.

3. The Court concluded that, there had been a continuing violation of Article 5 on account of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts of the missing Greek-Cypriot persons in respect of whom there was an arguable claim that they were in custody at the time they disappeared.

On the other hand, the Court found that there had been no violation of Article 5 by virtue of actual detention of Greek-Cypriot by the Turkish authorities due to the absence of sufficient evidence in this respect.

4. The court found that there had been a continuing violation of Article 3 in respect of the relatives of the Greek-Cypriot missing persons.

In fact, the Court maintained that the silence of the authorities of the respondent State in the face of the real concerns of the relatives of the missing persons had attained a level of severity which was to be categorised as inhuman treatment within the meaning of Article 3 (see also *Çakici v. Turkey*).

#### *B) Alleged violations of the rights of displaced persons to respect for their home and property*

1. The Court found a continuing violation of Article 8 by Turkey by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus.

Such conclusion was underpinned by two main observations. Firstly, the situation impugned by the

applicant Government had no basis in law within the meaning of Article 8 § 2, since it was enforced only as a matter of policy.

Secondly, the inter-communal talks could not be invoked as the only means to solve the displaced persons' complaint in order to legitimate a violation of the Convention.

2. The Court concluded that there had been a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus, were being denied access to and control, use and enjoyment of their property because of an administrative practise of the Turkish authorities, and were also being denied any compensation for the interference with their property rights.

As the above was codified into Article 159 of the TRNC Constitution, the Court found that any complaint was unassailable, and thus the requirement to exhaust domestic remedies was not applicable.

Additionally, the Court recalled its conclusion in *Loizidou*, wherein it found that Article 159 of the TRNC Constitution was invalid for the purposes of the Convention.

3. The Court held a violation of Article 13 by reason of the respondent State's failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 of the Convention and Article 1 of Protocol No. 1.

*C) Alleged Violations arising out of the living conditions of Greek Cypriot and Maronites living in northern Cyprus*

1. The Court found no violation of Article 2 on account of an alleged practice of denying access to medical services to Greek Cypriots and Maronites living in northern Cyprus.

The Court acknowledged that Article 2 § 1 obliges States to take appropriate steps to safeguard the lives of those within its jurisdiction; and, as it relates to the present case, a violation of Art. 2 may occur when an individual's life is put at risk through the denial of health care which a State has undertaken to make available to the population generally. (*L.C.B. v. the United Kingdom*). However, despite some shortcomings in individual cases, the Court observed that general access to medical services was available to them and it had not been established that the lives of any patients were put in danger on account of delays.

2. The Court dismissed the complaint under Art. 5 concerning acts of threat and actual aggression carried by the Turkish population against the Greek Cypriots without any appropriate counter-reaction of the authorities. Indeed, the Court found that those facts had to be more properly addressed from the angle of the requirements of Article 8.

3. The Court found no violation of Article 6 by reason of an alleged practice of denying to the Greek-Cypriot population a fair hearing by an independent and impartial tribunal in the determination of their civil rights and obligations.

The court held that, for the settlement of disputes relating to civil rights and obligations defined in domestic law, there was a functioning court system in the TRNC which was available to the Greek-Cypriot population, and had no flaws in its legal framework with regard to independency and impartiality.

Moreover, the Court affirmed that the illegality of the TRNC under international law was irrelevant from the standpoint of the Convention system.

4. The Court found a violation of art. 9 on account of restrictions placed on their freedom of movement which considerably curtailed their ability to observe their religious beliefs, for instance by hampering their access to places of worship outside their villages. On the contrary, the Court found no violation of art. 9 in respect of the Maronite population living in northern Cyprus, holding that there was insufficient evidence in this respect.

5. The Court found a violation of Article 10 inasmuch as school-books destined for use in their primary school were subject to measures of censorship on the alleged ground that their content was capable of fostering hostility between the ethnic communities in northern Cyprus, no matter how innocuous their content was.

Secondly, the Court observed that there were no possible remedies available in this respect.

6. The Court found no violation of Article 11 by reason of an alleged practice of denying Greek Cypriots the right to freedom of association; indeed the Court considered that this claim was insufficiently substantiated.

7. The Court found a continuing violation of Art. 1 of the Protocol no. 1 (right to property), because the Greek Cypriots right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory, and their possessions could not be bequeathed by them on death, and passed to the authorities as 'abandoned' property.

In this respect, the Court was not persuaded that legal proceedings would hold out any prospects of success, having regard to the respondent Government's view that the property of deceased Greek Cypriots passed to the authorities in accordance with the notion of 'abandoned'.

8. The Court found a violation of Article 2 of Protocol No. 1 because no Greek-language secondary-school was available to Greek Cypriots. Whilst the Article does not specify the language in which education must be given, the Court held that having assumed responsibility for the provision of Greek-language primary schooling, the failure of the 'TRNC' authorities to make continuing provision for it at the secondary-school level was a denial of the substance of the right having regard to the impact of this circumstances on families. Indeed, parents were *de facto* compelled to part from their children and send them to the south of Cyprus if they wanted to have their children to continue their education through the medium of the Greek language.

9. The Court found a violation of Art. 8. The Court came to this conclusion observing that Greek Cypriots who had permanently left the northern part of Cyprus (included school-children) were not allowed to return even if they had left a family behind, and severe restrictions were placed also on simple visits. Furthermore, the Community was in several ways intrusively monitored in respect of its contacts and movements.

In the absence of any legal basis for these restrictions, the Court also held that it was not to be considered whether the interferences at issue could be justified with reference to the provisions of Article 8 § 2.

10. The Court found a violation of Art. 3 because of the discrimination amounting to degrading treatment suffered by the Greek Cypriots living in Karpas.

Indeed, the court recalled that discrimination based on race can constitute an affront to human dignity and therefore gives rise to an issue under art. 3 irrespective of the relevance of Article 14 (see also *Abdulaziz, Cabales and Balkandali v. the United Kingdom*).

The Court then observed that the severe restrictions on the exercise of basic freedoms above described were directed at the Karpas Greek-Cypriot community only on ethnic grounds, with the purported effect of extinguishing it with the passage of time.

*D) Alleged Violations of the Turkish Cypriots and the Turkish-Cypriot Gypsy community in northern Cyprus*

1. The Court concluded that it had not been established that there had been an administrative practice of violation of the rights protected by Articles 3, 5, 8, 10 and 11 against Turkish Cypriots who were opponents of the regime in northern Cyprus.

Whilst it could not be excluded that by reason of their political opposition to the ruling parties in northern Cyprus Turkish Cypriots' rights were being interfered with, it could not conclude that during the period under consideration an administrative practice of suppressing all dissent existed.

In addition, the Court noted that the individuals concerned did not exhaust the possible remedies available in the 'TRNC' legal system.

2. The Court concluded that it had not been sufficiently substantiated that there had been an administrative practice violating the rights of the Turkish-Cypriot Gypsy community under Articles 3, 5, 8 and 14 of the Convention.

Despite acknowledging some individual cases of suffered hardship at the hands of the 'TRNC' authorities, the Court did not consider that these individual cases proved the existence of an administrative practice of violation of the invoked rights.

3. The Court found a violation of Art. 6 on account of the legislative practice of authorising the trial of civilians by military courts.

As per *Ireland v. the United Kingdom*, unlike individual applicants, a Contracting State is entitled to challenge under the Convention a law *in abstracto* as long as it is couched in terms sufficiently clear and precise to make the breach immediately apparent.

That said, the Court found no reason to doubt that the military courts under analysis suffered from the same defects of independency and impartiality which were highlighted in *Incal v. Turkey* due to structural links between the executive power and the military officers serving on the 'TRNC' military courts.

4. Because of insufficient evidence, the Court held that no violation of art. 10 had been established by virtue of alleged restrictions on the right of Turkish Cypriots living in northern Cyprus to receive information from the Greek-language press.

5. The Court found that it had not been established that there had been a violation of the right to freedom of association or assembly under Article 11 as a matter of administrative practice.

Indeed, the Court maintained that the applicant did not substantiate that the 'TRNC' authorities had made any attempt to prevent the creation of bi-communal organisations between Turkish Cypriots living in the north and Greek Cypriots in the south during the period under consideration.

6. The Court found that it had not been established that there had been a violation of Article 1 of Protocol No. 1 because the applicant had not substantiated that Turkish Cypriots living in northern Cyprus were prevented from accessing their property in the south by 'TRNC'.

authorities; and because sufficient remedies existed to secure redress against private interferences, and the existence of an administrative practice of condoning such interferences had not been substantiated.

7. The Court found no violation of Article 13 had been established, since the applicant government had not proved beyond reasonable doubt the ?TRNC? failure as a matter of administrative practice to secure effective remedies to Turkish Cypriots living in northern Cyprus.

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**Outcome:**

Alleged violations of the rights of Greek Cypriot missing persons and their relatives.

The Court held that there had been a breach of Arts. 2, 3, 5.

The Court held that there had not been a breach of Art. 4.

The Court held that it was unnecessary to necessary to examine the complaints under Articles 3, 6, 8, 10, 13, 14 and 17.

Alleged violations of the rights of displaced persons to respect for their home and property

The Court held that there had been a violation of Art. 8, 13, and Art. 1 of Protocol No. 1

The court held that it was unnecessary to examine whether there had been a violation of Art. 3, 17, 18, and Art. 14 taken in conjunction with Articles 8 and 13.

Alleged violations arising out of the living conditions of Greek Cypriots in Northern Cyprus.

The Court held that there had been a breach of Arts. 3, 8, 10, 13, 19, and Articles 1, 2 of Protocol No. 1.

The Court held that there had not been a breach of Arts. 2, 5, 6, 9, 11.

The Court held that it was unnecessary to examine the complaints under Articles 14 of the Convention taken in conjunction with Article 3 and other relevant Articles.

Alleged violations in respect of the rights of Turkish Cypriots, including members of the Gypsy community, living in Northern Cyprus.

The Court held that there had been a breach of Art. 6.

The Court held that there had not been established a violation of the rights of Turkish Cypriots under Arts. 3, 5, 8, 10, 11, 13 and Art. 1 of Art. 1 of Protocol No. 1; nor it had been established a violation of the rights of members of the Turkish-Cypriot Gypsy community under Articles 3, 5, 8 and 14.

Alleged violations of other articles of the Convention

The Court held that it was unnecessary to examine separately the complaints under Articles 1, 17, 18 and former Article 32 § 4 of the Convention.

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**Subsequent Proceedings :**

On 12 May 2014, the Court considered Cyprus? claim for just satisfaction for the violations relating

to the missing persons and the enclaved (*Cyprus v Turkey*). To this effect the Court decided that Turkey should pay 90 million Euros in total, and in particular 30 million Euros to the relatives of the missing persons and 60 million Euros to the enclaved. The award was based on article 41 ECHR according to which "the Court shall, if necessary, afford just satisfaction to the injured party" in cases of violations of the Convention or its Protocols.

#### Execution of the judgment by the Council of Europe Committee of Ministers

In several decisions and resolutions, the CoE Committee of Ministers found that adequate execution measures have been adopted relating to the living conditions of Greek Cypriots and Turkish Cypriots in northern Cyprus (see interim resolutions CM/ResDH(2005)44 and CM/ResDH(2007)25).

With regard to the issues relating to the rights of missing persons, the CM welcomed the progress made by the Committee on Missing Persons in Cyprus (CMP) in the research for and identification of the missing persons. The CM also reiterated that Turkish authorities have to adopt a proactive approach to providing the CMP with all the assistance it needs.

As to the issues relating to the property rights of enclaved Greek Cypriots, the CM expressed its appreciation for the measure taken, but it also indicated that it would later examine possible consequences on these issues of the separate Court's judgment on just satisfaction of 12 May 2014.

In June and September 2015, the CM reiterated its invitation to the Turkish authority to pay the sums awarded in that judgment.

#### **Observations/Comments:**

The judgment was followed by several dissenting opinions.

##### *1) Partly Dissenting Opinion of Judge Palm, Joined by Judges Jungwiert, Levits, Panáru, Kovler and Marcus-Helmons*

Judge Palm held that, as it did in its *Loizidou v. Turkey* judgment, the Court should have avoided elaborating a general theory concerning the validity and effectiveness of remedies in the "TRNC" for three principal reasons. Firstly, the principle of judicial restraint should have been given free rein since it was superfluous for the Court to express any view on the legal significance of the remedies in Northern Cyprus in order to decide all the complaints raised.

Secondly, recognising the "TRNC" judicial authorities for the purposes of Art. 13 undermines the firm position taken by the international community, according to which the "TRNC"'s statehood is "legally invalid".

Thirdly, requiring those subject to an occupying authority to have recourse to its courts as a precondition to have their complaints examined by this Court is an unrealistic proposition given the obvious and justifiable lack of confidence in such an administration of justice.

##### *2) Partly dissenting opinion of Judge Costa.*

Judge Costa contested the decision of considering unnecessary the breach of Art. 14 taken in conjunction with art. 9 against the Greek Cypriots living in Northern Cyprus, this decision being merely based on the fact that the Court had already recognised the discriminatory treatment serious enough to amount to inhuman and degrading treatment under Article 3.

The judge firstly pointed out that as a matter of general principle nothing prevents finding a violation of an article of the Convention taken both alone and in conjunction with Art. 14. (see *Chassagnou and Others v. France*). Secondly, the judge was not convinced that a violation under Article 3 necessarily encompasses everything and takes precedence over all other violations.

That said, the Judge highlighted that the religious ground was rather relevant in the isolation of the Greek-Cypriot community so that there was nothing illogical in finding also a violation of Article 9 taken together with Article 14.

The judge also contested the majority's finding that no practice of denying the protection of Turkish-Cypriot Gypsy community's rights had been established. In this respect, he claimed that the failure to bring an action before the local courts cannot be interpreted as a lack of evidence of an administrative practice of rights' violation and was not sufficient to dismiss the complaint.

### 3) *Partly dissenting opinion of Judge Fuad*

Firstly, Judge Fuad contested the finding of a violation of Art.1 of Protocol No. 1 by the respondent State. By embracing several remarks included in dissenting opinions expressed in *Loizidou v. Turkey*, the Judge held that the stand of the majority was exclusively based on the unquestioned position of the international community that the Turkish presence was illegal. In his opinion it was inappropriate to leave such a stand unquestioned by the Court itself.

Secondly, the judge objected to the finding of violations relating to Greek-Cypriot missing persons and their relatives. Firstly, the judge did not agree that the CMP procedures were not of themselves sufficient to meet the standard of an effective investigation under Article 2. Secondly, the judge maintained that the facts giving rise to an obligation to conduct effective investigations into the fate of missing Greek-Cypriots fell outside the scope of the jurisdiction of the Court. Indeed, Turkey only accepted the compulsory jurisdiction of the Court by its declaration of 22 January 1990 in relation to matters raised in respect of facts which have occurred subsequent to that date. In this sense, Judge Fuad also claimed that alleging a continuing violation up to the present could not serve the purpose of bypassing the temporal limits of the Court's jurisdiction. Thirdly, the judge did not agree that it had been established that any of the violations relied upon in relation to Greek Cypriots living in the Karpas region of Northern Cyprus were imputable to Turkey.

Considering the events that lead to the division of Cyprus, Judge Fuad embraced the dissenting opinion of Judge Gölcüklü in *Loizidou*, who claimed Northern Cyprus to be a sovereign authority, independent and democratic, despite the lack of recognition by the international community. Therefore, Judge Fuad did not agree that unless Turkey had been held accountable for the alleged violations in the Karpas, no other State would have been; and he affirmed that to determine whether Turkey could be held accountable for any violation it was essential to examine the role of its troops in northern Cyprus at the time of each relevant fact.

### 4) *Partly dissenting opinion of Judge Marcus-Helmons*

In line with Judge Palm's opinion, Judge Marcus-Helmons held that the conclusion of the majority to consider TRNC courts capable of triggering the requirement of exhaustion of domestic remedies was reached by giving the Advisory opinion in Namibia case before the ICJ an unduly wide interpretation. Indeed the opinion did not concern either the exhaustion of domestic remedies or the validity of courts established by an illegal government, and set up an exceptional rule only referred to habitual acts necessary for the proper functioning of life in society when disregarding them would only be to the detriment of the inhabitants of the territory. Whereas, in the present

case requiring the exhaustion of those remedies constituted an additional obstacle to secure an end to the suffered violations by applying to Strasbourg.

Similarly, the judge argued that the majority had disregarded the *travaux préparatoires* of the Convention, wherein it is affirmed that exhaustion must be effected according to generally recognised rules of international law.

Consistently, the Judge also held that courts established illegally in northern Cyprus did not either satisfy the requirements of Article 6 of the Convention, which requires inter alia: "...[a] tribunal ... established by law...?"; or the requirements of Article 13.

The judge also dissented from the majority by holding that there had been a violation of article 2 as a result of the "TRNC" authorities' refusal to afford Greek Cypriots and Maronites living in northern Cyprus access to medical care in another part of the Island. In his opinion this amounted to a violation of the State's undertaking under Article 2 to protect everyone's right to life *by law*, inasmuch as this right undoubtedly includes freedom to seek and to enjoy the best physically available medical treatment.

Finally, the judge held that not allowing the practise one's religion constituted a violation in itself, but additional restrictions on account of a specific religion transformed the measure also into the separate violation under Art. 14.

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[CYPRUS v. TURKEY \(2001\).pdf](#)[32]

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