EUROPEAN COURT OF HUMAN RIGHTS

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JUDGMENT IN THE CASE OF CYPRUS v. TURKEY

In a Grand Chamber judgment delivered at Strasbourg on 10 May 2001 in the case of ***Cyprus v. Turkey*** (application no. 25781/94), the European Court of Human Rights held, by sixteen votes to one, that the matters complained of by Cyprus in its application entailed Turkey's responsibility under the European Convention on Human Rights.

The Court held that there had been the following 14 violations of the Convention (see **Decision of the Court** for details):

Greek-Cypriot missing persons and their relatives

- a continuing **violation of Article 2** (right to life) of the Convention concerning the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances;
- a continuing **violation of Article 5** (right to liberty and security) concerning the failure of the Turkish authorities to conduct an effective investigation into the whereabouts and fate of the Greek-Cypriot missing persons in respect of whom there was an arguable claim that they were in Turkish custody at the time of their disappearance;
- a continuing **violation of Article 3** (prohibition of inhuman or degrading treatment) in that the silence of the Turkish authorities in the face of the real concerns of the relatives attained a level of severity which could only be categorised as inhuman treatment.

Home and property of displaced persons

- a continuing **violation of Article 8** (right to respect for private and family life, home and correspondence) concerning the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus;
- a continuing **violation of Article 1 of Protocol No. 1** (protection of property) concerning the fact that Greek-Cypriot owners of property in northern Cyprus were being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights;
- a **violation of Article 13** (right to an effective remedy) concerning the failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 and Article 1 of Protocol No. 1.

Living conditions of Greek Cypriots in Karpas region of northern Cyprus

- a **violation of Article 9** (freedom of thought, conscience and religion) in respect of Greek Cypriots living in northern Cyprus, concerning the effects of restrictions on freedom of movement which limited access to places of worship and participation in other aspects of religious life;
- a **violation of Article 10** (freedom of expression) in respect of Greek Cypriots living in northern Cyprus in so far as school-books destined for use in their primary school were subject to excessive measures of censorship;

- 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 and in that, in case of death, inheritance rights of relatives living in southern Cyprus were not recognised;
- a **violation of Article 2 of Protocol No. 1** (right to education) in respect of Greek Cypriots living in northern Cyprus in so far as no appropriate secondary-school facilities were available to them;
- a **violation of Article 3** in that the Greek Cypriots living in the Karpas area of northern Cyprus had been subjected to discrimination amounting to degrading treatment;
- a **violation of Article 8** concerning the right of Greek Cypriots living in northern Cyprus to respect for their private and family life and to respect for their home;
- a **violation of Article 13** by reason of the absence, as a matter of practice, of remedies in respect of interferences by the authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1.

Rights of Turkish Cypriots living in northern Cyprus

- a **violation of Article 6** (right to a fair trial) on account of the legislative practice of authorising the trial of civilians by military courts.

The Court further held that there had been **no violation** concerning a number of complaints, including all those raised under: Article 4 (prohibition of slavery and forced labour), Article 11 (freedom of assembly and association), Articles 14 (prohibition of discrimination), Article 17 (prohibition of abuse of rights) and Article 18 (limitation on use of restrictions on rights) read in conjunction with all those provisions. As regards a number of other allegations, the Court held that it was not necessary to consider the issues raised.

The Court also decided, unanimously, that the question of the possible application of Article 41 (just satisfaction) of the Convention was not ready for decision.

1. Principal facts

The case relates to the situation that has existed in northern Cyprus since the conduct of military operations there by Turkey in July and August 1974 and the continuing division of the territory of Cyprus. In connection with that situation, Cyprus maintained that Turkey had continued to violate the Convention in northern Cyprus after the adoption of two earlier reports by the European Commission of Human Rights, which were drawn up following previous applications brought by Cyprus against Turkey.

In the Convention proceedings, Cyprus contended that Turkey was accountable under the Convention for the violations alleged notwithstanding the proclamation of the "Turkish Republic of Northern Cyprus" in November 1983 and the subsequent enactment of the "TRNC Constitution" in May 1985. Cyprus maintained that the "TRNC" was an illegal entity from the standpoint of international law and pointed to the international community's condemnation of the establishment of the "TRNC". Turkey, on the other hand, maintained that the "TRNC" was a democratic and constitutional State, which was politically independent of all other sovereign States, including Turkey. For that reason, Turkey stressed that the allegations made by Cyprus were imputable exclusively to the "TRNC" and that Turkey could not be held accountable under the Convention for the acts or omissions on which those allegations were based.

2. Procedure

The application was lodged with the European Commission of Human Rights on 22 November 1994. Having declared the application admissible on 28 June 1996, the Commission appointed Delegates who took evidence in respect of various matters raised by the application in Strasbourg (27-28 November 1997), Cyprus (21-24 February 1998) and London (22 April 1998). Having concluded that there was no basis on which a friendly settlement could be secured, the Commission, following an oral hearing, adopted a report on 4 June 1999 in which it established the facts and expressed an opinion as to whether the facts disclosed the alleged breaches by Turkey of its obligations under the Convention.

The case was referred to the Court by the Government of the Republic of Cyprus on 30 August 1999 and by the Commission on 11 September 1999. The panel of the Grand Chamber of the Court decided that the case should be examined by the Grand Chamber.

3. Composition of the Court

Judgment was given by the Grand Chamber of seventeen judges, composed as follows:

Luzius **Wildhaber** (Swiss), ***President***,
Elisabeth **Palm** (Swedish),
Jean-Paul **Costa** (French),
Luigi **Ferrari Bravo**[1] (Italian),
Lucius **Caflisch**[2] (Swiss),
Willi **Fuhrmann** (Austrian),
Karel **Jungwiert** (Czech),
Marc **Fischbach** (Luxemburger),
Boštjan **Zupančič** (Slovenian),
Nina **Vajić** (Croatian),
John **Hedigan** (Irish),
Margarita **Tsatsa-Nikolovska** (FYROMacedonia),
Tudor **Panţîru** (Moldovan),
Egils **Levits** (Latvian),
Anatoly **Kovler** (Russian), ***judges***,
Kutlu Tekin **Fuad**, **ad hoc *judge*** in respect of Turkey,
Silvio **Marcus-Helmons**, **ad hoc *judge*** in respect of Cyprus,

and also Michele **de Salvia**, ***Registrar***.

4. Complaints

Before the Court, Cyprus alleged violations of the Convention under Articles 1 (obligation to respect human rights), 2, 3, 4, 5, 6, 8, 9, 10, 11, 13, Articles 1 and 2 of Protocol No. 1, and Articles 14, 17, and 18. According to Cyprus, these Articles were violated as a matter of administrative practice by the respondent State.

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[1] Judge elected in respect of San Marino.
[2] Judge elected in respect of Liechtenstein.

The allegations concerned the following issues:

(a) Greek-Cypriot missing persons and their relatives

In respect of Greek-Cypriot missing persons, it was alleged that, if any were still in Turkish custody, this would constitute a form of slavery or servitude contrary to Article 4 and a grave breach of their right to liberty under Article 5. In addition, Cyprus maintained that there had been a violation of Articles 2 and 5 on account of Turkey's failure to carry out an investigation into the disappearance of these persons in life-threatening circumstances and to account for their whereabouts.

In respect of the relatives of missing persons, Cyprus alleged violations of Articles 3, 8 and 10 on account of the Turkish authorities' consistent and continuing failure to provide information on the fate of the missing persons.

(b) Home and property of displaced persons

Cyprus complained, among other things, under Article 8 (the continuing refusal to allow Greek Cypriots to return to their homes and families in northern Cyprus; implantation of Turkish settlers in northern Cyprus to the detriment of the demographic and cultural environment of northern Cyprus), Article 1 of Protocol No. 1 (denial of access to and enjoyment of property, re-assignment of property, withholding of compensation and deprivation of title), Article 13 of the Convention (failure to provide any remedy to displaced persons in respect of the alleged violations of Article 8 and Article 1 of Protocol No. 1) and Article 14 taken in conjunction with the preceding Articles (discrimination against Greeks and Greek Cypriots as regards, among other things, enjoyment of their property). Cyprus further invoked Article 3 (discrimination against displaced persons amounting to ill-treatment), and Articles 17 (abuse of rights) and 18 (impermissible use of restrictions on rights).

(c) Living conditions of Greek Cypriots in the Karpas region of northern Cyprus

As regards the Karpas Greek Cypriots, Cyprus relied on, among other things, Articles 2 (denial of adequate medical treatment and services), 3 (discriminatory treatment; in particular in view of their advanced age, the restrictions placed on them and methods of coercion used were said to amount to inhuman and degrading treatment), 5 (threat to security of person and absence of official action to prevent this), 6 (lack of a fair hearing before an independent and impartial tribunal established by law for the determination of their civil rights), 8 (interference with their right to respect for their private and family life, home and correspondence), 9 (interference with their right to manifest their religion on account of restrictions on their freedom of movement and access to places of worship), 10 (excessive censorship of school-books and restrictions on importation of Greek-language newspapers and books), 11 (impediments to their participation in bi or inter-communal events or gatherings), 13 (denial of an effective remedy in respect of their complaints) and 14 (discrimination on racial, religious and linguistic grounds), and Articles 1 (interference with the property of deceased Greek Cypriots as well as with the property of such persons who permanently leave northern Cyprus) and 2 (denial of secondary-education facilities to Greek-Cypriot children) of Protocol No. 1.

(d) Complaints relating to Turkish Cypriots, including members of the Gypsy community, living in northern Cyprus

Cyprus alleged, among other things, violations in relation to Turkish Cypriots who are opponents of the "TRNC" *régime* of Articles 5 (arbitrary arrest and detention), 6 (trial by "military courts"), 8 (assaults and harassment by third parties), 10 (prohibition of Greek-language newspapers and interference with the right to freedom of expression), 11 (denial of the right to associate freely with Greek Cypriots), Article 1 of Protocol No.1 (failure to allow Turkish Cypriots to return to their properties in southern Cyprus). Violations were also alleged of Articles 3, 5, 8 and 13 and Article 2 of Protocol No. 1 in relation to the treatment of Turkish-Cypriot Gypsies living in northern Cyprus.

5. Decision of the Court[1]

Preliminary issues

The Court considered, unanimously, that, notwithstanding Turkey's failure either to submit a memorial to the Court or to attend the oral hearing held on 20 September 2000 and to plead these issues afresh, it had jurisdiction to examine those preliminary issues raised by Turkey in the proceedings before the Commission which the Commission reserved for the merits stage.

The Court held, unanimously, that the applicant Government had both *locus standi* to bring the application, given that the Republic of Cyprus was the sole legitimate government of Cyprus, and a legitimate legal interest in having the merits of the application examined since neither of the resolutions adopted by the Committee of Ministers of the Council of Europe on the Commission's previous reports had resulted in a decision which could be said to be dispositive of the issues raised in the application. Furthermore, the Court, unanimously, confirmed the Commission's conclusion that situations which ended more than six months before the date of introduction of the application (22 May 1994) fell outside the scope of its examination.

As to Turkey's denial of liability under the Convention for the allegations made against it, the Court held, by sixteen votes to one, that the facts complained of in the application fell within the "jurisdiction" of Turkey within the meaning of Article 1 of the Convention and therefore entailed the respondent State's responsibility under the Convention. In reaching this conclusion, the Court noted that such a finding was consistent with its earlier statements in its ***Loizidou v. Turkey*** (*merits*) judgment[2]. In that judgment, the Court had noted that Turkey exercised effective overall control of northern Cyprus through its military presence there, with the result that its responsibility under the Convention was engaged for the policies and actions of the "TRNC" authorities. In the instant case, the Court stressed that Turkey's responsibility under the Convention could not be confined to the acts of its own soldiers and officials operating in northern Cyprus but was also engaged by virtue of the acts of the local administration ("the TRNC"), which survived by virtue of Turkish military and other support.

The Court further held, by ten votes to seven, that, for the purposes of the exhaustion requirements under the former Article 26 (current Article 35 § 1), remedies available in the

[1] This summary by the Registry does not bind the Court.
[2] Judgment of 18 December 1996, Reports of Judgments and Decisions 1996-VI, §§ 52-56.

"TRNC" may be regarded as "domestic remedies" of the respondent State and that the question of the effectiveness of these remedies had to be considered in the specific circumstances where it arose, on a case-by case basis. The majority of the Court, in line with the majority viewpoint of the Commission, considered, among other things, and with reference to the Advisory Opinion of the International Court of Justice in the Namibia case, that in situations similar to those arising in the present case, the obligation to disregard acts of *de facto* entities, like the "TRNC", was far from absolute. For the Court, life went on in the territory concerned for its inhabitants and that life must be made tolerable and be protected by the *de facto* authorities, including their courts. It considered that, and in the interests of the inhabitants, the acts of those authorities could not simply be ignored by third States or by international institutions, especially courts. To hold otherwise would amount to stripping the inhabitants of the territory of all their rights whenever they were discussed in an international context, which would amount to depriving them even of the minimum standard of rights to which they were entitled. In reaching this conclusion, the Court's majority stressed that its reasoning did not in any way legitimise the "TRNC" and reaffirmed the view that the government of the Republic of Cyprus remained the sole legitimate government of Cyprus.

(a) Greek-Cypriot missing persons and their relatives

The Court, unanimously, found that there had been **no violation of Article 2** by reason of an alleged violation of a substantive obligation under that Article in respect of any of the missing persons. The evidence before it did not substantiate to the required standard that any of the missing persons were killed in circumstances engaging the respondent State's liability.

On the other hand, the Court found, by sixteen votes to one, that there had been a **continuing violation of Article 2** on account of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances.

The Court concluded, unanimously, that **no violation of Article 4** had been established.

Although it found, unanimously, that it had not been established that, during the period under consideration, any of the missing persons were actually in detention, the Court ruled, by sixteen votes to one, that there had been a **continuing violation of Article 5** by virtue of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of the Greek-Cypriot missing persons in respect of whom there was an arguable claim that they were in Turkish custody at the time of their disappearance.

As to the relatives of the Greek-Cypriot missing persons, the Court held, by sixteen votes to one, that there had been a **continuing violation of Article 3**. In the Court's opinion, the silence of the authorities of the respondent State in the face of the real concerns of the relatives attained a level of severity which could only be categorised as inhuman treatment.

Having regard to that conclusion, the Court held, unanimously, that it was not necessary to examine whether Articles 8 and 10 of the Convention had been violated in respect of the relatives of the Greek-Cypriot missing persons.

(b) Home and property of displaced persons

The Court held, by sixteen votes to one, that there had been a **continuing violation of Article 8** by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus. Having regard to that conclusion, the Court found, unanimously, that it was not necessary to examine whether there had been a further violation of that Article by reason of the alleged manipulation of the demographic and cultural environment of the Greek-Cypriot displaced persons' homes in northern Cyprus. As to the applicant Government's complaint under Article 8 concerning the 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, the Court held, unanimously, that this complaint fell to be considered in the context of their allegations in respect of the living conditions of the Karpas Greek Cypriots.

Furthermore, the Court held, by sixteen votes to one, 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 as well as any compensation for the interference with their property rights.

The Court also held, by sixteen votes to one, that there had been a **violation of Article 13** by reason of the failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 and Article 1 of Protocol No. 1. It did not find it necessary (unanimously) to examine whether in this case there had been a violation of Article 14 taken in conjunction with Articles 8 and 13 and Article 1 of Protocol No. 1, or whether the alleged discriminatory treatment of Greek-Cypriot displaced persons also gave rise to a breach of Article 3. It was also of the unanimous view that it was not necessary to examine separately the applicant Government's complaints under Articles 17 and 18, having regard to its findings under Articles 8 and 13 and Article 1 of Protocol No. 1.

(c) Living conditions of Greek Cypriots in Karpas region of northern Cyprus

The Court held, by sixteen votes to one, that there had been a **violation of Article 9** in respect of Greek Cypriots living in northern Cyprus. As regards Maronites living in northern Cyprus it found, unanimously, **no violation of Article 9**. The Court also held, by sixteen votes to one, that there had been a **violation of Article 10** in respect of Greek Cypriots living in northern Cyprus in so far as school-books destined for use in their primary school were subject to excessive measures of censorship.

The Court further held, by sixteen votes to one, 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 and in that, in case of death, inheritance rights of relatives living in southern Cyprus were not recognised.

The Court also ruled, by sixteen votes to one, that there had been **a violation of Article 2 of Protocol No. 1** in respect of Greek Cypriots living in northern Cyprus in so far as no appropriate secondary-school facilities were available to them.

In addition, the Court found, by sixteen votes to one, that there had been **a violation of Article 3** in that the Greek Cypriots living in the Karpas area of northern Cyprus had been subjected to discrimination amounting to degrading treatment. It observed in this connection that the Karpas Greek-Cypriot population was compelled to live in a situation of isolation and that its members were controlled and restricted in their movements and had no prospect of renewing or developing their community. For the Court, the conditions under which the population was condemned to live were debasing and violated the very notion of respect for the human dignity of its members. The discriminatory treatment attained a level of severity which amounted to degrading treatment.

The Court further held, by sixteen votes to one, that, from an overall standpoint, there had been a **violation of Article 8** concerning the right of Greek Cypriots living in northern Cyprus to respect for their private and family life and to respect for their home. In this connection the Court noted that the population concerned was subjected to serious restrictions on the exercise of these rights, including monitoring of its members' movements and contacts. The surveillance effected by the authorities even extended to the physical presence of State agents in the homes of Greek Cypriots on the occasion of social or other visits paid by third parties, including family members. Having regard to that conclusion, the Court found, unanimously, that it was not necessary to examine separately the applicant Government's complaint under Article 8 concerning the effect of the respondent State's alleged colonisation policy on the demographic and cultural environment of the Greek Cypriots' homes. The Court further found, unanimously, **no violation of Article 8** concerning the right to respect for correspondence by reason of an alleged practice of interference with the right of Greek Cypriots living in northern Cyprus to respect for their correspondence.

The Court found, by sixteen votes to one, that there had been a **violation of Article 13** by reason of the absence, as a matter of practice, of remedies in respect of interferences by the authorities with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1. On the other hand, it held, by eleven votes to six, that **no violation of Article 13** had been established by reason of the alleged absence of remedies in respect of interferences by private persons with the rights of Greek Cypriots living in northern Cyprus under Article 8 and Article 1 of Protocol No. 1.

The Court held, by sixteen votes to one, that **no violation of Article 2** had been established by reason of an alleged practice of denying access to medical services to Greek Cypriots and Maronites living in northern Cyprus and, by the same margin, that there had been **no violation of Article 5**. Furthermore, by eleven votes to six, it held that **no violation of Article 6** had been established in respect of Greek Cypriots living in northern Cyprus by reason of an alleged practice of denying them a fair hearing by an independent and impartial tribunal in the determination of their civil rights and obligations. The Court also held, unanimously, that **no violation of Article 11** had been established by reason of an alleged practice of denying Greek Cypriots living in northern Cyprus the right to freedom of association and that **no violation of Article 1 of Protocol No. 1** had been established by virtue of an alleged practice of failing to protect the property of Greek Cypriots living in northern Cyprus against interferences by private persons.

The Court decided, unanimously, that it was not necessary to examine whether there had been a violation of Article 14 taken in conjunction with Article 3 in respect of Greek Cypriots living in northern Cyprus, having regard to its finding under Article 3 and, by fourteen votes

to three, that, having regard to the particular circumstances of this case, it was not necessary to for it to examine whether there had been a breach of Article 14 taken in conjunction with other relevant Articles.

(d) Right of displaced Greek Cypriots to hold elections

The Court held, unanimously, that it was not necessary to examine whether the facts disclosed a violation of the right of displaced Greek Cypriots to hold free elections, as guaranteed by Article 3 of Protocol No. 1.

(e) Rights of Turkish Cypriots, including members of Gypsy community, living in northern Cyprus

Under this heading, the Court, unanimously, declined jurisdiction to examine those aspects of the applicant Government's complaints under Articles 6, 8, 10 and 11 in respect of political opponents of the regime in the "TRNC" as well as their complaints under Articles 1 and 2 of Protocol No. 1 in respect of the Turkish-Cypriot Gypsy community, which were held by the Commission not to be within the scope of the case as declared admissible.

The Court found, by sixteen votes to one, that there had been a **violation of Article 6** on account of the legislative practice of authorising the trial of civilians by military courts.

The Court further held, unanimously, that there had **been no violation of Articles 3, 5, 8, 10 and 11** concerning the rights of Turkish Cypriot opponents of the regime in northern Cyprus by reason of an alleged administrative practice, including an alleged practice of failing to protect their rights under these Articles. By sixteen votes to one, the Court found **no violation of Articles 3, 5, 8 and 14** concerning the rights of members of the Turkish-Cypriot Gypsy community by reason of an alleged administrative practice, including an alleged practice of failing to protect this group's rights under these Articles.

It held, unanimously, that: **no violation of Article 10** had been established by reason of an alleged practice of restricting the right of Turkish Cypriots living in northern Cyprus to receive information from the Greek-language press; **no violation of Article 11** had been established by reason of an alleged practice of interference with the right to freedom of association or assembly of Turkish Cypriots living in northern Cyprus; **no violation of Article 1 of Protocol No. 1** had been established by reason of an alleged administrative practice, including an alleged practice of failing to secure enjoyment of their possessions in southern Cyprus to Turkish Cypriots living in northern Cyprus.

By eleven votes to six, the Court found that **no violation of Article 13** had been established by reason of an alleged practice of failing to secure effective remedies to Turkish Cypriots living in northern Cyprus.

(f) Alleged violations of Articles 1, 17, 18 and former Article 32 § 4

The Court held unanimously that it was not necessary to examine separately the applicant Government's complaints under these Articles.

Judges Palm, Costa, Jungwiert, Panţîru, Levits, Kovler, Fuad and Marcus-Helmons expressed partly dissenting opinions, which are annexed to the judgment.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

Registry of the European Court of Human Rights
F – 67075 Strasbourg Cedex
Contacts: Roderick Liddell (telephone: (0)3 88 41 24 92)
Emma Hellyer (telephone: (0)3 90 21 42 15)
Fax: (0)3 88 41 27 91

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