

# The Judgment of the European Court of Human Rights in the *Case of Cyprus v. Turkey*

Loukis G. Loucaides\*

**Keywords:** continuing violations; domestic remedies; missing persons; state responsibility; Turkey.

**Abstract.** On 10 May 2001 the European Court of Human Rights delivered the above Judgment which pronounces for the first time on the overall legal consequences of Turkey's invasion and continued military presence in Cyprus since 1974. The Judgment is important in many respects. It deals with a wide spectrum of systematic violations and decides certain significant legal questions in the sphere of international law and of human rights in particular pertaining to state responsibility, continuing violations, liability for missing persons, denial of access to homes and property, domestic remedies by *de facto* organs and administrative practice. The Judgment is also noteworthy for its various dissenting opinions.

## 1. INTRODUCTION

On 10 May 2001 the European Court of Human Rights delivered a historic Judgment<sup>1</sup> in which it found Turkey responsible for committing grave and continuing violations in Cyprus of a number of human rights guaranteed by the 1950 European Convention on Human Rights. The violations had begun as a result of the Turkish invasion of Cyprus in July 1974 and the ensuing occupation of the northern part of the island. The Judgment is uniquely important in many respects. Apart from the fact that it deals with a wide spectrum of violations of rare gravity resulting from the military occupation of the territory of one of the High Contracting Parties to the Convention by another High Contracting Party, the Judgment decides certain important legal questions in the sphere of international law and of human rights in particular. The Judgment is also noteworthy for its various dissenting opinions.

---

\* Judge of the European Court of Human Rights; former Member of the European Commission of Human Rights (1989–1998).

1. Case of Cyprus v. Turkey, Merits, Judgment of 10 May 2001, Appl. no. 25781/94, to be published in the ECHR Reports of Judgments and Decisions in 2002.

## 2. GRAVE VIOLATIONS

The Court found, *inter alia*:

- a continuing violation of Article 8 of the Convention by reason of the refusal to allow the return of any Greek-Cypriot displaced persons – exceeding 211,000 – to their homes in northern Cyprus;<sup>2</sup>
- a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus – again exceeding 211,000 – are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights;<sup>3</sup>
- a continuing violation of Article 2 of the Convention on account of the Turkish authorities' failure to conduct an effective investigation into the whereabouts and fate of Greek-Cypriot missing persons who disappeared in 1974 in life-threatening circumstances<sup>4</sup> and of Article 5 by virtue of the failure to investigate the fate of the Greek-Cypriot missing persons in respect of whom there is an arguable claim that they were in Turkish custody at the time of their disappearance;<sup>5</sup> and
- a continuing violation of Article 3 of the Convention in respect of the relatives of the Greek-Cypriot missing persons on account of their agony resulting from the silence of the respondent state as to the fate of the missing persons.<sup>6</sup>

This is the first time in the history of the Convention that the Court established thereunder has found a High Contracting Party responsible for continuing violations of so many rights affecting such a large number of persons over such a long period of time. So far only two inter-state cases have been determined by the Court. The first was the *Case of Ireland v. the United Kingdom*<sup>7</sup> in 1978, which, however, was not comparable in terms of the scale of violations with the case under consideration.

## 3. BACKGROUND TO THE CASE

For a better understanding of the magnitude of the case it is necessary to bear in mind its background, which is set out in the Judgment as follows:

---

2. Judgment, paras. 166–175.

3. *Id.*, at paras. 178–189.

4. *Id.*, at para. 136.

5. *Id.*, at para. 150.

6. *Id.*, at para. 158.

7. Merits and Just Satisfaction, Judgment of 18 January 1978, 1978 ECHR (Ser. A) No. 25, at 90–91.

The complaints raised in this application arise out of the Turkish military operations in northern Cyprus in July and August 1974 and the continuing division of the territory of Cyprus. At the time of the Court's consideration of the merits of the *Loizidou v. Turkey* case in 1996, the Turkish military presence at the material time was described in the following terms [...]:<sup>8</sup>

Turkish armed forces of more than 30,000 personnel are stationed throughout the whole of the occupied area of northern Cyprus, which is constantly patrolled and has checkpoints on all main lines of communication.

A major development in the continuing division of Cyprus occurred in November 1983 with the proclamation of the 'Turkish Republic of Northern Cyprus' (the 'TRNC') and the subsequent enactment of the 'TRNC Constitution' on 7 May 1985.

This development was condemned by the international community. On 18 November 1983 the United Nations Security Council adopted Resolution 541 (1983) declaring the proclamation of the establishment of the 'TRNC' legally invalid and calling upon all States not to recognise any Cypriot State other than the Republic of Cyprus [...].<sup>9</sup>

[...] The events of July and August 1974 and their aftermath gave rise to three previous applications by the applicant Government against the respondent State. The first [...] and second [...] applications were joined by the Commission and led to the adoption on 10 July 1976 of a report [...] in which the Commission 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 third application [...] lodged by the applicant Government was the subject of a further report [...] adopted by the Commission on 4 October 1983 [...]. In that report 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.<sup>10</sup>

[...] [t]his is the first occasion on which [the Court] has been seised of the complaints invoked by the applicant Government in the context of an inter-State application [...] as regards the previous applications, it was not open to the parties or to the Commission to refer them to the Court [...]. Turkey only accepted the compulsory jurisdiction of the Court by its declaration of 22 January 1990.<sup>11</sup>

In its report in respect of the first two applications the Commission found Turkey responsible for her refusal to allow the return of more than 170,000 Greek-Cypriot refugees to their homes in the north of Cyprus, the eviction of Greek Cypriots from houses, including their own homes, the separation of Greek-Cypriot families, inhuman treatment of Greek Cypriots including repeated rapes and other forms of ill-treatment, deprivation of life on a large scale, illegal detentions, deprivation of possessions to an

---

8. Judgment, para. 13.

9. *Id.*, at para. 14.

10. *Id.*, at para. 17.

11. *Id.*, at para. 66.

indefinite extent, absence of remedies and discrimination on the ground of ethnic origin.<sup>12</sup> In its report regarding the third application the Commission found Turkey responsible for continuing displacement of more than 170,000 Greek Cypriots, separation of families, deprivation of possessions, failure to account for the fate of missing Greek Cypriots unlawfully deprived of their liberty in Turkish custody in 1974, absence of remedies and discrimination as per the first report.<sup>13</sup>

Both reports ended up with the Committee of Ministers, which under former Article 32 of the Convention had the responsibility for deciding whether there had been a violation of the Convention. However, in both cases the Committee of Ministers failed to take a decision in accordance with that Article and confined itself, basically, to declassifying the first report and publishing the second. The Court agreed with the applicant Government's position that "The Committee of Ministers never took any formal decision on the findings contained in either of the Commission's reports under former Article 31."<sup>14</sup>

#### 4. CONTINUATION OF VIOLATIONS

The violations found by the Court reflect a continuation of the violations found by the Commission in the previous cases of *Cyprus v. Turkey*, the main thrust of such violations being the result of a policy pursued by Turkey aiming at the geographical separation of the Greek-Cypriot and Turkish-Cypriot Communities. This is borne out by the Judgment, *inter alia*, in the following statements:

The Court further notes that the situation impugned by the applicant Government has obtained since the events of 1974 in northern Cyprus. It would appear that it [...] is enforced as a matter of policy in furtherance of a bi-zonal arrangement designed, it is claimed, to minimise the risk of conflict which the intermingling of the Greek and Turkish-Cypriot communities in the north might engender [...].<sup>15</sup>

[...] [t]he violation at issue has endured as a matter of policy since 1974 and must be considered continuing.<sup>16</sup>

According to the Court, this policy was also applied in respect of the remaining Greek Cypriots in the occupied area and more specifically those residing in the Karpas area, where the living conditions were found by the Court to amount to an administrative practice by Turkey of violating several Convention rights, such as the right to the peaceful enjoyment of

---

12. Report of the Commission (appl. nos. 6780/74 and 6950/75), 10 July 1976, at 163–167.

13. D & R 72, 5, at 50–51.

14. Judgment, paras. 64–67.

15. *Id.*, at para. 173.

16. *Id.*, at para. 174.

one's possessions, the right to respect for one's family life and home,<sup>17</sup> the right to freedom of religion,<sup>18</sup> freedom of expression,<sup>19</sup> the right to peaceful enjoyment of a person's possessions<sup>20</sup> the right to ensure education of one's children<sup>21</sup> and the right to an effective remedy.<sup>22</sup> The Court concluded as follows:

For the Court it is an inescapable conclusion that the interferences at issue were directed at the Karpas Greek-Cypriot community for the very reason that they belonged to this class of persons. The treatment to which they were subjected during the period under consideration can only be explained in terms of the features which distinguish them from the Turkish-Cypriot population, namely their ethnic origin, race and religion. The Court would further note that it is the policy of the respondent State to pursue discussions within the framework of the inter-communal talks on the basis of bi-zonal and bi-communal principles [...]. The respondent State's attachment to these principles must be considered to be reflected in the situation in which the Karpas Greek Cypriots live and are compelled to live: isolated, restricted in their movements, controlled and with no prospect of renewing or developing their community. The conditions under which that population is condemned to live are debasing and violate the very notion of respect for the human dignity of its members.<sup>23</sup>

In the Court's opinion, and with reference to the period under consideration, the discriminatory treatment attained a level of severity which amounted to degrading treatment.<sup>24</sup>

## 5. TURKISH CYPRIOTS AND THE GYPSY COMMUNITY

As regards the alleged violations as a matter of administrative practice of the rights of Turkish Cypriots and the Gypsy community in northern Cyprus, the Court concluded that although there may have been individual cases of interference with the rights of political opponents of the regime in the occupied area, it had not been established that, during the period under consideration,<sup>25</sup> there had been an administrative practice of violation of the rights of Turkish Cypriots<sup>26</sup> or of members of the Turkish-Cypriot Gypsy community.<sup>27</sup>

However, contrary to the conclusions of the Commission, the Court found that there had been a violation of Article 6 of the Convention on

---

17. *Id.*, at paras. 292–296.

18. *Id.*, at paras. 243–246.

19. *Id.*, at paras. 252 and 254.

20. *Id.*, at paras. 269 and 270.

21. *Id.*, at paras. 278 and 280.

22. *Id.*, at para. 324.

23. *Id.*, at para. 309.

24. *Id.*, at para. 310.

25. 22 November 1994–22 May 1994.

26. Judgment, paras. 346 and 348.

27. *Id.*, at para. 353.

account of the legislative practice of authorising the trial of civilians by military courts in the occupied area.<sup>28</sup>

## 6. ESTABLISHMENT OF THE FACTS

In coming to its conclusions, the Court followed, in practically all respects, the Commission's approach in the case. As regards the establishment of the facts and the assessment of the evidence, the Court did not depart from the findings of the Commission invoking its case-law to the effect that

prior to the entry into force of Protocol No. 11 to the Convention the establishment and verification of the facts were primarily a matter for the Commission and only in exceptional circumstances the Court would exercise its powers to make its own findings of fact.<sup>29</sup>

It is to be noted that the applicant Government disputed the conclusion of the Commission as regards certain of its findings. This was particularly the case with regard to the allegations of violations of the human rights of Turkish Cypriots and members of the Gypsy community. The Court endorsed the approach of the Commission and reaffirmed its case-law to the effect that the standard of proof in relation to complaints of breaches of the Convention should be "beyond reasonable doubt" and "that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of facts."<sup>30</sup> As regards the establishment of the existence of administrative practices, the Court reasserted its position that the burden of proof is not borne by one or the other of the two Governments concerned. "Rather, the Court must examine all the material before it, irrespective of its origin."<sup>31</sup>

The respondent Government, without giving any reasons, did not participate in the proceedings before the Court. They however actively participated in all stages of the examination of the case by the Commission.

## 7. PRELIMINARY RULINGS

The Court rejected four preliminary objections of the respondent Government, which had also been rejected by the Commission. Similar objections were raised by Turkey in the three previous inter-state applications before the Commission and they were likewise rejected by the

---

28. *Id.*, at paras. 354–359.

29. *Id.*, at para. 117.

30. *Id.*, at paras. 112 and 341.

31. *Id.*, at para. 113.

latter. Some of them had already been rejected by the Court in the individual application in the *Case of Loizidou v. Turkey*.<sup>32</sup>

In rejecting these objections the Court held that:

- The Government of the Republic of Cyprus is the sole legitimate Government of Cyprus;<sup>33</sup>
- The view of the international community is that the ‘TRNC’ is not a state under international law and is therefore illegal<sup>34</sup> and the Court confirmed this view;<sup>35</sup>
- Turkey, which has “effective overall control over northern Cyprus,” is responsible for securing all human rights under the Convention and violations of such rights by her own soldiers, or officials, or by the local administration (the ‘TRNC’) are imputable to her under Article 1 of the Convention;<sup>36</sup>
- If she acquiesces or connives in the acts of private individuals, which violate Convention rights of others, she may also be responsible;<sup>37</sup> and
- ‘TRNC’ remedies are “domestic remedies” of Turkey.<sup>38</sup>

## 8. DISSENTING OPINIONS

### 8.1. Individual opinions

The conclusions of the Court regarding the violations of the rights of Greek Cypriots mentioned above were reached by a majority of 16 votes to 1. The conclusion that there has been no violation of the rights of Turkish Cypriots, with the exception of the violation of Article 6 as regards the military courts, was reached unanimously. The finding regarding the latter violation and the finding that there has been no violation of the rights of members of the Turkish-Cypriot Gypsy community were adopted by 16 votes to 1.

Judge Fuad disagreed with all the findings of the violations of rights of Greek Cypriots and of the violation on account of the functioning of military courts. He also disagreed with the ruling of the Court that Turkey

---

32. Merits and Just Satisfaction, Judgment of 18 December 1996, 1996(VI) ECHR Reports 2216.

33. Judgment, paras. 61 and 90.

34. *Id.*, at paras. 61, 90 and 238.

35. *Id.*, at para. 236.

36. *Id.*, at para. 77. The Court followed its Judgment in the *Loizidou* case where it held that the concept of ‘jurisdiction’ [...] is not restricted to the national territory of the Contracting States [...] the responsibility of Contracting States [...] could also arise when as a consequence of military action – whether lawful or unlawful – [the state] exercises effective control of an area outside its national territory [...].

*Id.*, at para. 76.

37. *Id.*, at para. 81.

38. *Id.*, at paras. 82–102.

has jurisdiction in respect of the facts complained of in the application. In his Dissenting Opinion he disagreed with the Judgment of the Court in the *Loizidou* case and quoted in this respect the views of Judges Bernhardt, Pettiti and Gölcüklü, who dissented in that case. The following points were made:

The establishment of “the border” in 1974 and its closure – not an act of Turkish troops – were responsible for denying Mrs Loizidou access to her property in the northern part of Cyprus. It was not possible to base a judgment exclusively on the assumption that the Turkish presence was illegal and that Turkey was therefore responsible for more or less everything that happened in northern Cyprus. The situation of Cyprus was complex and required a thorough investigation on site. The whole problem of the two communities had more to do with politics and diplomacy than with European judicial scrutiny. The Court was dealing with a political situation and it was not possible to separate the political aspects of the case from the legal aspects. The implementation of the Treaty of Guarantee established the separation of the two communities. The problem of Cyprus went well beyond the dimensions of a mere lawsuit. In view of the prevailing special circumstances of the problem it was not realistic to allow every dispossessed property owner to demand the immediate right to resume possession of his or her property, wherever situated. The answer to the question of the missing persons was the existing investigation procedure for missing persons from both communities. The northern part of Cyprus did not come under Turkey’s jurisdiction. ‘TRNC’ was not subordinate to Turkey. It was democratic and exercised independent and effective control over that area.

Judge Costa disagreed with the majority as regards the religious discrimination against the Greek Cypriots living in the Karpas region and the violation of the rights of the Turkish-Cypriot Gypsy community. In his view there should also be a finding of a violation of Article 9 taken together with Article 14 and of numerous violations of the rights of the Turkish-Cypriot Gypsy community as a matter of administrative practice.

Judge Marcus-Helmons found, contrary to the majority, a violation of Article 2 of the Convention on account of the refusal to afford to Greek Cypriots living in the Karpas area sufficient access to medical care and a violation of Article 14 in conjunction with Article 9 as regards the relevant restrictions imposed on that population. He also, in a Separate Opinion, disagreed with the majority on the subject of the ‘TRNC’ remedies and expressed the view that the courts established illegally in northern Cyprus could not be considered as “established by law” or take an impartial decision in a matter relating to the military occupation.

## 8.2. Joint opinions – the ‘TRNC’ judicial remedies

### 8.2.1. The majority

Four of the Court’s findings were the subject of a noteworthy disagreement among its members. The findings related to the following matters:

- (a) exhaustion of ‘TRNC’ judicial remedies;
- (b) no violation of Article 6 of the Convention in respect of Greek Cypriots living in northern Cyprus;
- (c) no violation of Article 13 of the Convention by reason of the absence of remedies in respect of interferences by private persons with the rights of Greek Cypriots living in northern Cyprus under Article 8 of the Convention and Article 1 of Protocol No. 1; and
- (d) no violation of Article 13 of the Convention by reason of an alleged practice of failing to secure effective remedies to Turkish Cypriots living in northern Cyprus.

The finding as regards (a) was adopted by 10 votes to 7. Findings (b), (c) and (d) were adopted by 11 votes to 6. The issue was whether the remedies of the ‘TRNC’ judicial system could be considered as remedies which qualified for the purposes of Articles 26 (now 35), 6 and 13 of the Convention. The first finding related to a preliminary issue and had to be examined as such. In view of the common questions arising in all four matters the decision of the Court on this preliminary issue automatically determined the core problems raised by the other three matters.

The majority, relying on a principle of international law established by the Advisory Opinion of the International Court of Justice (‘ICJ’) in the *Namibia* case,<sup>39</sup> adopted the position that the requirement to exhaust domestic remedies applied to the judicial remedies of the ‘TRNC’ courts established in the occupied area, and therefore inhabitants of that area had to exhaust those remedies before applying to the Court unless their ineffectiveness could be proved – a point to be examined on a case-by-case basis.<sup>40</sup> The majority invoked the following passage from the Advisory Opinion:

In general, the non-recognition of South Africa’s administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international co-operation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages,

---

39. Legal Consequences for States of the Continued presence of South Africa in Namibia notwithstanding Security Council Resolution 276, Advisory Opinion, 21 June 1971, 1971 ICJ Rep. 16.

40. Judgment, paras. 90–99.

the effects of which can be ignored only to the detriment of the inhabitants of the Territory.<sup>41</sup>

The majority approached the question as follows:

It appears evident to the Court, despite the reservations the Greek-Cypriot community in northern Cyprus may harbour regarding the ‘TRNC’ courts, that the absence of such institutions would work to the detriment of the members of that community. Moreover, recognising the effectiveness of those bodies for the limited purpose of protecting the rights of the territory’s inhabitants does not, in the Court’s view and following the Advisory Opinion of the International Court of Justice, legitimise the ‘TRNC’ in any way.<sup>42</sup>

It is to be noted that the International Court’s Advisory Opinion, [...] shows clearly that, in situations similar to those arising in the present case, the obligation to disregard acts of *de facto* entities is far from absolute. Life goes on in the territory concerned for its inhabitants. That life must be made tolerable and be protected by the *de facto* authorities, including their courts; and, in the very interest of the inhabitants, the acts of these authorities related thereto cannot be simply ignored by third States or by international institutions, especially courts, including this one [...].<sup>43</sup>

### 8.2.2. *The joint Dissenting Opinion*

The position of the majority was contested by a weighty opinion of Judge Palm joined by Judges Jundgwiert, Levits, Panțîru, Kovler and Marcus-Helmons on the following grounds:

The Court should have shown judicial restraint by avoiding an elaboration of a general theory concerning the validity and effectiveness of remedies in the ‘TRNC’ because (a) such a theory in the present case was not at all necessary since the Court did not in fact at any stage reject a complaint for failure to exhaust domestic remedies; (b) “the Court should avoid putting itself in a position where, for supposedly laudable reasons, it is tempted to fashion a semblance of legality out of a clearly illegal situation”; (c) Turkey herself did not claim that the “remedies” in question are Turkish remedies; (d) it could not be for the benefit of Greek Cypriots to require them to exhaust these “remedies.”

The dissenting judges accepted that, even in a situation of illegality, it is in the interest of inhabitants to have some form of court system to enable basic everyday disputes to be settled by a source of authority and it is not excluded that the decisions of such courts could be recognised by the courts of other countries. However Judge Palm’s opinion went on to state that:

[...] it does not follow from my acceptance of the utility of a local court system that this Court should require applicants in northern Cyprus complaining of human-

41. *Id.*, at para. 93.

42. *Id.*, at para. 92.

43. *Id.*, at para. 96.

rights violations to exhaust these possible avenues of redress [...] before it has jurisdiction to examine their complaints. Episodic recognition by foreign courts is one thing. The exhaustion requirement is another. To require those subject to the exigencies of an occupying authority to have recourse to the courts as a precondition to having their complaints of human-rights violations examined by this Court is surely an unrealistic proposition given the obvious and justifiable lack of confidence in such a system of administration of justice [...].

[...] The Court accepts that the enclaved Greek Cypriots are ‘compelled to live in a hostile environment in which it is hardly possible to lead a normal private and family life’ [...]. It also finds that this population is the victim of discriminatory and degrading treatment based on ethnic origin, race and religion [...] the Court accepts the general picture of a [...] community that has been subjected to a substantial reduction of the Convention rights of its members under colour of a policy of ethnic separation [...].

In such a context, is it realistic to say that the members of this community have access to the courts in respect of their civil claims? Is it a credible proposition that there exists a haven of juridical relief ready and able to defend the rights of this beleaguered population notwithstanding the existence of an official policy of containment and oppression?

It is submitted that that is the better approach. The *Namibia* opinion accepts the recognition of certain transactions which are unavoidable *ex necessitate* in the daily relations of individuals. The opinion does not *require* the inhabitants of an occupied territory to resort to illegal remedies established by the *de facto* organs before they have a right to bring their case before an international court. The more so when it comes to the requirement of exhaustion of domestic remedies for the purposes of the Convention applicable in this case. Such remedies should not be illegal. The Preamble to the Convention reiterates adherence to the “rule of law.” It is inconceivable for the Convention to express respect for the rule of law while requiring individuals to exhaust illegal remedies before resorting to the Convention institutions. As rightly observed by the dissenters, “Episodic recognition by foreign courts is one thing. The exhaustion requirement is another.”

## 9. CONCLUSION

The Court has, for the first time, pronounced on the overall legal consequences of Turkey’s invasion and continued military presence in Cyprus. In terms of scale and nature of violations of the Convention the case is unprecedented. The Court has proved once more that it can act judicially and defend the public order of Europe in situations where the violations are intertwined with political issues leading to them.<sup>44</sup>

---

44. *Cf.* US Diplomatic and Consular Staff in Teheran, 1980 ICJ Rep. 90.

Of great significance are the international law issues decided by the Court: That a state which has effective control over an area of the territory of another state is responsible for securing all human rights and its responsibility is engaged by virtue of the acts of its local administration; that such state may be also responsible for the acts of private individuals if it acquiesces or connives in such acts; that the failure of authorities of a state to conduct effective investigations into the whereabouts of missing persons last seen in the custody of agents of that state and subsequently disappeared in life-threatening circumstances constitutes continuing breach of the obligations to protect life and liberty; that the refusal to allow the return of displaced persons to their homes (after 27 years) amounts to a continuing breach of the Convention.

Equally important in terms of international law and human rights is the finding, (albeit disputed by a powerful dissenting opinion) that remedies available by *de facto* organs in an occupied area are to be regarded as remedies of the state which has control over that area and that it is in the interest of the inhabitants to have such remedies which, for that matter, qualify as remedies that in principle have to be exhausted before resorting to an international court. The case is also an outstanding example of the concept of “continuing” violations.

Because of its dimensions and the attitude of Turkey so far, the case is bound to test the efficiency of the Convention system.