Another Door Closed: Report to the European Court of Human Rights for Relief from the Turkish Invasion of 1974 May No Longer Be Possible for Greek Cypriots

Jenna C. Borders

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Another Door Closed: Resort to the European Court of Human Rights for Relief from the Turkish Invasion of 1974 May No Longer Be Possible for Greek Cypriots

Jenna C. Borders†

I. Introduction ........................................................................................................... 690
II. A Brief History of the Cyprus Problem ............................................................. 692
   A. Early History: 330 A.D. through 1878 ......................................................... 692
   B. British Rule: 1878 through 1960 .................................................................. 693
   C. Intercommunal Tensions: 1960-1974 ......................................................... 695
   D. The Turkish Invasion, Its Aftermath, and the TRNC: 1974 to Present ...... 696
III. An Introduction to the European Court of Human Rights .................................. 704
   A. History and Jurisdiction .............................................................................. 704
   B. Enforcement by the Committee of Ministers .............................................. 707
IV. The Role of the European Court of Human Rights in Cyprus ............................. 710
   A. The Law of the TRNC .............................................................................. 713
   B. The Early Applications ............................................................................. 720
   C. Loizidou v. Turkey ..................................................................................... 722
   D. Cyprus v. Turkey ....................................................................................... 727
   E. Xenides-Arestis v. Turkey .......................................................................... 729
   F. Demades v. Turkey ..................................................................................... 734
   G. Alexandrou v. Turkey and Settlement with the IPC ................................... 735
   H. Demopoulos and Others v. Turkey ............................................................ 738
V. Possible Recourse to the European Court of Justice—Apostolides v. Orams ................................................................. 745
VI. Conclusion ....................................................................................................... 748

† B.A., Tulane University, 2006; J.D. Candidate, University of North Carolina School of Law, 2011; I would like to thank my family for their support and encouragement as well as the staff at Global Learning Semesters and the faculty at the University of Nicosia for providing me with my first introduction to the Cyprus Problem in 2006. I am grateful to the staff and the editorial board at the North Carolina Journal of International Law and Commercial Regulation for their suggestions and their work on this comment.
I. Introduction

In 2005, after decades of waiting, Andreas crossed the Green Line, a United Nations buffer zone, into northern Cyprus for the first and only time since 1974. Although Andreas was born in Cyprus in 1943 and has lived there for most of his life, the Cyprus he has known for the last thirty-five years is a divided nation, torn apart by conflict and Turkey’s 1974 invasion. For many years, Greek and Turkish Cypriots lived in harmony, but today, they remain separated by the buffer zone and by the country’s tumultuous history.

When Andreas reached his destination, Famagusta, he found the city unrecognizable. Many of his close relatives had lived in the city prior to the invasion. But when he visited in 2005, he found all of their homes destroyed and all of their possessions stolen. Nothing remained of the lives they had built. Forced to leave, they fled without knowing if they would ever return. In the words of Andreas, “imagine if you have your own house, your property, your family, and some troops from another nation come and force you out and you move to another place with no money, no job. The worst [is] if some of your family are killed or are missing persons. Imagine that you cannot return back to the place you were born or lived for many years.”

The international community has condemned the invasion that divested Andreas’ relatives of their property, yet many Greek Cypriots remain uncompensated and without any closure. Andreas is unsure whether he would cross the Green Line again, and as the years pass, his hopes of political settlement and a united Cyprus have begun to fade. Andreas is not alone in his concerns...

Since 1974, the Mediterranean island of Cyprus has been ethnically segregated, with a United Nations (“U.N.”) buffer zone separating Turkish Cypriots (“TCs”) in northern Cyprus from Greek Cypriots (“GCs”) in the south. The division occurred after

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1 Interview with Andreas, Citizen of the Republic of Cyprus (Mar. 15, 2011). Andreas did not wish for his full name to be used in this article.

2 See Margaret W. Bartlett, Cyprus, The United Nations, and the Quest for Unity 40 (2007); see also Van Coufoudakis, International Aggression and Violations of Human Rights: The Case of Turkey in Cyprus 32 (Theofanis G. Stavrou et al. eds., 2008).
intercommunal tensions peaked between the Turkish and Greek Cypriot communities, sparking an invasion by Turkey, purportedly to protect the TC minority. As a result of the invasion, Turkey managed to gain control of over one-third of Cyprus, forcing GCs out of their homes in the north and preventing their return. Today, the Turkish Republic of Northern Cyprus ("TRNC"), a de facto entity recognized as a legitimate government only by Turkey, governs the northern part of Cyprus in violation of international law. Although over three and a half decades have passed since the 1974 invasion, there has been no resolution to what has become known as the "Cyprus Problem."

Though a comprehensive solution has proven elusive, GCs have sought relief by applying to the European Court of Human Rights ("ECHR" or the "Court"), claiming that Turkey's actions during the invasion and afterward violated and continue to violate the European Convention on Human Rights ("Convention"). The potential availability of recourse to the ECHR was an encouraging development for GCs, particularly GCs seeking compensation for violations of their property rights. However, due to a March 2010 ECHR decision, Demopoulos and Others v. Turkey, GCs may no longer rely on the ECHR to vindicate their rights as a court of first instance. In Demopoulos, the ECHR determined that the TRNC-created Immovable Property Commission ("IPC") was an adequate and effective domestic remedy. As a result, GCs must apply to the IPC and satisfy the Convention's exhaustion of local

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3 See COUFOUDAKIS, supra note 2, at 31, 32.
4 See id. at 3, 32 (noting that despite Turkey's claim that the goal of the invasion was "to restore the status quo ante in Cyprus," it has failed to do so).
5 See id. at 27-28.
6 See id. at 3.
8 See Kudret Özersay & Ayla Gürel, The Cyprus Problem at the European Court of Human Rights, in CYPRUS: A CONFLICT AT THE CROSSROADS 273, 286 (Thomas Diez & Nathalie Tocci eds., 2009) (stating that Turkey has complied with the ECHR judgment in Loizidou v. Turkey).
10 See id. at 23.
11 See id. at 41; see generally id. at 10-14 (explaining the structure and purpose of the IPC).
remedies requirement before applying to the ECHR for review.\textsuperscript{12} In concluding the IPC was satisfactory, the Court dismissed GC concerns about the efficacy and neutrality of the IPC.\textsuperscript{13} The ECHR similarly rejected the GCs’ claim that legitimizing the IPC paves the way for recognition of the TRNC, an entity the international community has deemed to be “illegal and invalid.”\textsuperscript{14}

This Comment will begin by describing the history of the Cyprus Problem and the current political state of affairs in Cyprus in Section II. Sections III and IV will explain the development of the ECHR and its enforcement mechanism, the Committee of Ministers (“Committee”), as well as the role of the ECHR in the Cyprus Problem. Although the primary focus of this Comment is the role of the ECHR in Cyprus, Section V will briefly discuss a recent decision by the European Court of Justice (“ECJ”) addressing the enforceability of GC property claims in other European Union (“EU”) countries.

II. A Brief History of the Cyprus Problem

A. Early History: 330 A.D. through 1878

Understanding the Cyprus Problem requires an appreciation of the historical events culminating in the division of the island. Between 330 A.D. and 1191 A.D., Cyprus was under Greek rule.\textsuperscript{15} Due to Cyprus’s strategic location in the Mediterranean Sea, however, many other nations subsequently conquered the island, influencing Cypriot culture in the process.\textsuperscript{16} Even so, the impact of Greek rule persisted throughout the centuries, enduring over 300 years of control by the Ottoman Empire between 1571 and 1878 and the influx of a Turkish minority on the island during that

\textsuperscript{12} See id. at 41.
\textsuperscript{13} See id. at 41-42; see also Özersay & Gürel, supra note 8, at 284.
\textsuperscript{14} See THE CYPRUS ISSUE: A DOCUMENTARY HISTORY, 1878-2007 373 (Murat Metin Hakki ed., 2007) [hereinafter THE CYPRUS ISSUE] (citing U.N. Security Council Resolution 550 as referring to the TRNC as “illegal and invalid” and calling on “all States not to recognise the purported state of the ‘Turkish Republic of Northern Cyprus’ set up by secessionist acts and . . . not to facilitate or in any way assist the aforesaid secessionist entity”).
\textsuperscript{15} See BARTLETT, supra note 2, at 7-9.
\textsuperscript{16} See id. at 8-9.
period. The Turkish minority introduced Cyprus to the Turkish language and customs as well as to the Islamic faith.

B. British Rule: 1878 through 1960

In 1878, Britain’s support of the Ottoman Empire ultimately led to British administrative control of Cyprus, followed by annexation in 1914. Cyprus became a British Crown Colony in 1925, remaining so until it gained its independence in 1960. During Ottoman and British rule, “peaceful bicomunal coexistence was the norm” for the GC and TC populations, and the communities were interspersed throughout Cyprus. Despite the relative peace of the period, toward the end of British rule, “[c]onflict in Cypriot society was evolving along multiple lines, ranging from the anticolonial struggle against the British, to interethnic tensions between GCs and TCs to intra-ethnic rivalries among the GC as well as the TC community.”

To combat British control over Cyprus, the GCs formed EOKA, a paramilitary force opposing British rule, in 1955. The leader of EOKA, George Grivas, built his career in the Greek military and endorsed violence as a means of progress. GCs, including Archbishop Makarios, began rallying for enosis, or political union, with Greece. In response, the British attempted to suppress the EOKA through harsh tactics, including imprisonments, interrogations, torture, killings, and the deportation of Makarios.

17 See id. at 8; see also COUFOUDAKIS, supra note 2, at 5.
18 See COUFOUDAKIS, supra note 2, at 5.
19 See James Ker-Lindsay, A History of Cyprus Peace Proposals, in REUNIFYING CYPRUS: THE ANNAN PLAN AND BEYOND 11, 12 (Andrekos Varnava & Hubert Faustmann eds., 2009).
20 See BARTLETT, supra note 2, at 9.
21 See id.
22 See COUFOUDAKIS, supra note 2, at 5.
23 Id.
25 See BARTLETT, supra note 2, at 14.
26 See ANASTASIOU, supra note 24, at 86-88.
27 See BARTLETT, supra note 2, at 9, 14.
28 See id. at 14 (revealing that Britain detained over 1,500 Greeks and GCs...
In addition to fueling tensions between the British and the GCs, the push for enosis increased animosity between GCs and TCs. With Greek nationalism on the rise, TCs gradually “began to form their own political organizations along ethnic and nationalist lines, similar to those that had evolved in the GC community.”

Intercommunal fighting increased as the TCs attempted to eliminate the EOKA and, with Turkey’s aid, created their own army, Volkan. Rather than independence or enosis, TCs advocated either the return of Cyprus to Turkey, the Ottoman Empire’s successor, or the partition of Cyprus along ethnic lines, also known as takism. Takism would permit each side to join its “motherland” and engage in self-determination.

As violence erupted, the possibility of Greece and Turkey, two North Atlantic Treaty Organization (“NATO”) allies, going to war posed a real threat. To prevent the conflict from escalating, both countries began to support independence for Cyprus. In 1959, Great Britain, Greece and Turkey participated in the Zürich and London Agreements (“Agreements”), which led to Cypriot independence on August 16, 1960. Unfortunately, the limited participation by GCs and TCs in the negotiation of the Agreements inhibited acceptance of the terms and paved the way for substantial unrest and dissatisfaction.

associated with EOKA); see also COUFOUDAKIS, supra note 2, at 16-17 (referencing Greece’s filing of an interstate application against Britain in the European Commission of Human Rights in both 1956 and 1957, alleging that Britain had engaged in “torture and ill treatment” of GC detainees in violation of the Convention).

29 See Ker-Lindsay, supra note 19, at 12.
30 See BARTLETT, supra note 2, at 14.
31 See ANASTASIOU, supra note 24, at 88-89.
32 See ANASTASIOU, supra note 24, at 90.
33 See id.
34 See Ker-Lindsay, supra note 19, at 13.
35 See id.
36 See BARTLETT, supra note 2, at 16; see also COUFOUDAKIS, supra note 2, at 1. For more information about the Agreements, see THE CYPRUS ISSUE, supra note 14, at 31-39; see also ANASTASIOU, supra note 24, at 94.
37 See COUFOUDAKIS, supra note 2, at 1; see also ANASTASIOU, supra note 24, at 94 (explaining that GCs ultimately accepted the compromise in return for amnesty for EOKA political prisoners, whereas TCs accepted it in exchange for guaranteed protection against the Greek minority).
By 1960, nearly eighty percent of Cypriots were GC, with the remaining twenty percent consisting largely of TCs.\textsuperscript{38} To ensure minority representation in the new republic, the Agreements established a quota system whereby the Cypriot President would be GC, but the Vice President and a substantial minority of the civil service and the army would be TC.\textsuperscript{39} In addition to granting "extraordinary veto powers" to the TC minority, the Agreements also contained the Treaty of Guarantee and the Treaty of Alliance.\textsuperscript{40} As a result, Great Britain, Greece and Turkey became "guarantors of the new [R]epublic," entitled to maintain a military presence on the island and possessing "vaguely defined rights of intervention" in Cypriot affairs if necessary to preserve the nation's independence.\textsuperscript{41}

C. Intercommunal Tensions: 1960-1974

In the new Republic, GCs and TCs continued to view each other suspiciously.\textsuperscript{42} In order to make the Cypriot Constitution more palatable to GCs, Makarios, now President of Cyprus, proposed amendments to reduce the powers granted to the TC minority; however, Turkey rejected the amendments, and intercommunal clashes ensued from 1963 to 1964.\textsuperscript{43} Breaking free from the government, TC leaders began to encourage TCs to move into Turkish enclaves and to reignite the call for takism.\textsuperscript{44} As of December 1963, TCs ceased to have a role in the Republic's

\textsuperscript{38} See Ker-Lindsay, supra note 19, at 13 (identifying eighteen percent of Cypriots as TCs, seventy-eight percent as GCs, and four percent as Maronites, Latins, or Armenians).

\textsuperscript{39} See Bartlett, supra note 2, at 16 (indicating that thirty percent of the civil service and forty percent of the army would be TCs).

\textsuperscript{40} See Coufoudakis, supra note 2, at 1; Bartlett, supra note 2, at 16.

\textsuperscript{41} See Coufoudakis, supra note 2, at 1; Bartlett, supra note 2, at 16; see also Ker-Lindsay, supra note 19, at 13.

\textsuperscript{42} See Anastasiou, supra note 24, at 94-95 (referencing the "artificial solidarity" created by the new Republic as it forced together rival groups "deeply divided around competing nationalist movements and political ideologies" without resolving underlying issues); see also Bartlett, supra note 2, at 23-27.

\textsuperscript{43} See Ker-Lindsay, supra note 19, at 13-14.

\textsuperscript{44} See Bartlett, supra note 2, at 17-18; see also Anastasiou, supra note 24, at 121 (indicating that in the TC enclaves, soldiers from Turkey helped provide security and aided in administration).
government. The U.N. deployed a peacekeeping force, the United Nations Force in Cyprus ("UNFICYP"), in March 1964, to protect against Turkey’s threatened military intervention and the increasing violence. UNFICYP remains a presence in Cyprus today. By the end of 1964, GCs directly controlled ninety-seven percent of the land in Cyprus although the TCs comprised nearly twenty percent of the population.

In the decade preceding the Turkish invasion in 1974, Cyprus was plagued by “[a]ssassination attempts on President Makarios, along with political murders, abductions, accusations, and reprisals,” making “frequent outbreaks of bloodshed... no surprise.” During this period, Makarios abandoned enosis as a goal and adopted a more moderate pro-independence stance. Despite Makarios’s willingness to accept independence, other GCs, led by Grivas, formed EOKA B to revitalize the movement for enosis. In 1973, an autocratic junta ruling with “unreserved authoritarianism” seized control of Greece and aligned with EOKA B, hoping to establish a “Greek right-wing dictatorship” in Cyprus and to facilitate enosis. The EOKA B and the junta ultimately attempted to oust Makarios from the presidency on July 14, 1974, prompting swift intervention by Turkey.

D. The Turkish Invasion, Its Aftermath, and the TRNC: 1974 to Present

On July 20, 1974, Turkey invaded Cyprus, causing a civil war among Cypriots to escalate into “an interstate, ethnonational
war.  

A mere three days after the invasion, the Greek junta collapsed, restoring democratic rule in Greece and returning Makarios to the Cypriot presidency. Although Turkey claimed the purpose of its invasion was to restore the status quo in Cyprus, Turkey ultimately occupied over one-third of Cyprus, ignoring international condemnation and U.N. Security Council resolutions deploring its actions. To attempt to justify the invasion, Turkey stated it was merely protecting TCs pursuant to its obligations under the 1960 Treaty of Guarantee; however, Turkey did little to promote the reunification of Cyprus. Today, a buffer zone maintained by UNFICYP known as the “Green Line” continues to divide the island into the GC Republic of Cyprus (“Republic”) in the south and the de facto government, known as the TRNC, in the north. Attempts at resolving the stalemate have all failed.

As a result of the Turkish invasion, 170,000 GCs were forcibly expelled from their homes in northern Cyprus. These refugees represented twenty-eight percent of the island’s total population in 1974 and seventy percent of the population in the area that is now under Turkish control. The GCs living in northern Cyprus:  

fled for their lives during and in the aftermath of the invasion. Their personal property, including their homes, were seized, and movable property was removed by Turkish soldiers. Media reports showed looted property, including cars, buses, household goods, etc., in cities in southern Turkey. Turkish naval vessels transported these possessions to the Turkish mainland. Greek Cypriot

55 See ANASTASIOU, supra note 24, at 99.
56 See id.
57 See COUFOUDAKIS, supra note 2, at 2.
58 See ANASTASIOU, supra note 24, at 100.
59 See BARTLETT, supra note 2, at 1, 3, 143.
60 See generally BARTLETT, supra note 2, at 3-4 (describing the ongoing involvement of UNFICYP); see also THE CYPRUS ISSUE, supra note 14, at 381 (quoting U.N. Security Council Resolution 1217, “reaffirm[ing] that the status quo is unacceptable and that negotiations on a final political solution of the Cyprus problem have been at an impasse for too long; . . . a Cyprus settlement must be based on a State of Cyprus with a single sovereignty and international personality and a single citizenship, with its independence and territorial integrity safe-guarded”).
61 See COUFOUDAKIS, supra note 2, at 3.
62 See id.
homes and furnishings were distributed to Turkish Cypriots and later on to illegal Turkish settlers. Buildings along the ceasefire line were burned along with orchards and crops belonging to Greek Cypriots. Religious and archeological properties bore the brunt of the wanton destruction and looting.

To complete the division of the island along ethnic lines, 40,000 TCs left their homes in the southern part of Cyprus and moved north. An estimated 3,000 individuals were killed in the conflict, and an additional 1,619 were declared missing, some of whom are believed to have been taken to prisons in Turkey, but whose fate remains unknown. Today, the Committee on Missing Persons ("CMP") continues to identify bodies with DNA analysis; however, the CMP is not authorized to investigate the cause of death or to determine the identity of the responsible party. Furthermore, the CMP may not investigate actions by Turkish officials or army personnel in Cyprus.

The thirty-four percent of the island’s total area that Turkey’s army overran contained seventy percent of the nation’s resources, forty percent of its schools, nearly half of its agricultural production, twenty percent of its forests, and many of the island’s ports, including Famagusta, which handled over eighty percent of Cyprus’s trade. Turkish troops looted GC homes and businesses and confiscated property in northern Cyprus; evidence also indicates that GC citizens were raped, detained, murdered, tortured, and deported. After the July invasion, refugees

63 Id. at 41-42.

64 See Ker-Lindsay, supra note 19, at 16; see also COUFOUDAKIS, supra note 2, at 3.

65 See ANASTASIOU, supra note 24, at 122-23; see also COUFOUDAKIS, supra note 2, at 49 (referencing the belief that the 1,619 people who remained missing were alive when hostilities ceased and criticizing the fact that nearly forty percent of the missing were civilians captured by Turkish forces).

66 See COUFOUDAKIS, supra note 2, at 53 (stating that the CMP has determined the identity of the bodies of eighty-five of the missing).

67 See id. at 3.

68 See id. at 3, 49-59 (explaining the role of the CMP in identifying remains and referring to Turkey’s refusal to account for the fate of the missing or to produce its records of Cypriot detainees in violation of the Geneva Convention).

69 See ANASTASIOU, supra note 24, at 123.

70 See COUFOUDAKIS, supra note 2, at 4.
depended on medical care, food, and temporary housing provided by the International Red Cross and the Cypriot government; given the island’s small size, the invasion was catastrophic to GCs.  \(^{71}\)

Although the majority of GCs fled in July and August 1974, about 20,000 Greek and Maronite Cypriots known as “the enclaved” refused to leave their homes in northern Cyprus and remained in an area under Turkish military control.  \(^{72}\) In recent years, their numbers have dwindled, with only approximately 500 remaining, many of whom are elderly; the rest left due to the “oppression, harassment, denial of educational opportunities or access to medical care, restrictions in their freedom of movement and their religious rights, and violations of their home, family, and privacy rights.”  \(^{73}\)

On November 15, 1983, Rauf Denktash, the leader of the TC community, unilaterally declared independence and established the TRNC, aided by Turkish economic and military support.  \(^{74}\) Today, “[a]ll governments, except that of Turkey, and all international and regional organizations recognize only the Republic of Cyprus, its sovereignty, unity, and territorial integrity . . . [T]his consistent international position has been reaffirmed by numerous resolutions and actions.”  \(^{75}\)

In addition to supporting the creation of the TRNC, Turkey has encouraged Turkish citizens to relocate to Cyprus “under a deliberate Turkish government policy intended to alter the demography of the [TC] community and of Cyprus as a whole.”  \(^{76}\) Outnumbering TCs two to one, an estimated 160,000 Turkish settlers, many of whom have completed military service in

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\(^{71}\) See BARTLETT, supra note 2, at 95.

\(^{72}\) See ANASTASIOU, supra note 24, at 123; see also BARTLETT, supra note 2, at 19.

\(^{73}\) COUFOUDAKIS, supra note 2, at 60, 62 (listing some additional reasons that the enclaved left, including restrictions on communication and inheritance rights).

\(^{74}\) See ANASTASIOU, supra note 24, at 102.

\(^{75}\) COUFOUDAKIS, supra note 2, at 1; see also THE CYPRUS ISSUE, supra note 14, at 371-72 (quoting U.N. Security Council Resolution 541, which states that “the attempt to create a ‘Turkish Republic of Northern Cyprus’, is invalid, and will contribute to a worsening of the situation in Cyprus,” and urges “all States not to recognize any Cypriot state other than the Republic of Cyprus” and to “refrain from any action which might exacerbate the situation”).

\(^{76}\) COUFOUDAKIS, supra note 2, at 4, 80-82.
Turkey, have relocated to Cyprus. Home to an estimated 40,000 Turkish troops, northern Cyprus has one soldier for every six civilians. To facilitate the settlers’ relocation, the Turkish government provided them with various incentives, including citizenship in the TRNC, employment opportunities, housing, and property ownership. The Republic’s entry into the EU also contributed to the influx of settlers, as many hoped to benefit from EU membership by moving to Cyprus.

The division of the island has suppressed the economic growth of both the TRNC and the Republic, leading to a high level of unemployment and a GDP that is merely two-thirds of what it was prior to 1974. The lingering economic effects are much more pronounced in the TRNC; for example, the per capita GC income exceeds the per capita TC income five to one. The reason for the extreme disparity can be attributed to an internationally recognized economic embargo that was placed on northern Cyprus following the invasion by Turkey and the establishment of the TRNC. Due to the embargo, the Turkish north became reliant on financial aid from Turkey, establishing the Turkish lira as their monetary unit and adopting the Turkish language. This reliance on Turkey: retarded economic development and... Northern Cyprus became dependent on an artificially sustained economy through direct state aid from Turkey. In the name of physical security and political independence, the TC community was compelled to bear economic stagnation and regression, and, most importantly, isolation and exclusion from direct international commerce and trade.

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77 See id. at 80-82 (noting that the TC population in Cyprus has declined from around 114,000 TCs in 1974 to only around 80,000 TCs, in part due to the depressed economy in northern Cyprus); see also ANASTASIOU, supra note 24, at 123 (estimating the number of Turkish settlers at 80,000).

78 See COUFOUDAKIS, supra note 2, at 4, 81.

79 See id. at 82 (noting that as of the year 2000, over 30,000 title deeds were given to Turkish settlers, including titles to properties that belonged to GCs).

80 See id.

81 See id. at 4.

82 See ANASTASIOU, supra note 24, at 10.

83 See id.

84 See id.; see also COUFOUDAKIS, supra note 2, at 4.

85 ANASTASIOU, supra note 24, at 10.
Further, the economic effects of the division, along with inadequate housing, medical facilities, and schools, have hindered progress in Cyprus.  

Since 1974, there have been various proposals for resolving the Cyprus Problem, yet all have failed. The GC position has steadily weakened as TC bargaining power has increased due to the realities of the situation; more recent settlement proposals call for greater autonomy for TCs than earlier proposals rejected by GCs. When Cyprus began negotiating for accession to the EU, settlement efforts increased. Turkey initially believed the EU would reject Cypriot membership rather than “risk provoking a crisis with Turkey, a major state with 60 million people.” When it became evident that Cyprus was a serious candidate for admission, new talks began between the TCs and GCs, with the EU indicating that although “it would prefer to see a united Cyprus join, . . . if that were not possible a divided island would still become a member.” Given the EU’s willingness to admit Cyprus even without resolution of the Cyprus Problem, Turkey became more amenable to a reunification of Cyprus. Desiring EU membership itself, Turkey realized that the Cyprus Problem posed an obstacle in its path.  

After Kofi Annan, the Secretary-General of the U.N. at the time, became involved in the settlement process in 2004, the U.N. presented the Annan Plan, designed to create a “United Cyprus Republic” (“UCR”) by “emphasizing conflict resolution and cooperation over societal cohesion.” The plan anticipated that

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86 See COUFODAKIS, supra note 2, at 4.
87 See generally Ker-Lindsay, supra note 19, at 16-21 (summarizing some of the proposed solutions).
88 See id. at 20-21 (noting, for example, that the children of Turkish settlers who arrived in northern Cyprus in the 1970s have been raised in Cyprus and call it home; as a result, the international community recognizes that dealing with the problems in Cyprus today may require acceptance of some of the changes in demography, settlement patterns, and culture that have occurred in the last thirty-five years).
89 Id. at 19.
90 Id. at 19; see also COUFODAKIS, supra note 2, at 2.
91 See ANASTASIOU, supra note 24, at 30-31.
92 See Ker-Lindsay, supra note 19, at 19-20.
93 Christala Yakinthou, Consociational Democracy and Cyprus: The House that Annan Built? in REUNIFYING CYPRUS: THE ANNAN PLAN AND BEYOND 25 (Andrekos
the UCR would be "an indissoluble partnership between the federal government and two equal constituent states."94 Each would have powers related to administration at the state and federal level, and the focus would be on shared governmental decision-making and contribution.95 To be acceptable to both communities, the Annan Plan attempted to balance individual property rights and the need for refugees to return home with the recognition that over thirty years had passed since the invasion and the refugees' former homes had new inhabitants, some of whom were also refugees.96 An impartial property board composed of GCs, TCs, and independent foreign nationals would be created to hear claims and allow applicants to choose between receiving compensation for property or obtaining full restitution and reinstated possession of property if feasible.97 Additional options included participating in the sale, exchange or long-term lease of property.

The Annan Plan would also have led to the withdrawal of all pending cases brought by GCs against Turkey in the ECHR without the consent of the applicants.99 Critics believed that this
aspect of the Annan Plan, which would have allowed a political settlement to take precedence over pending ECHR claims, would have "been a significant blow to the credibility of the [C]onvention and of the European Court of Human Rights."\textsuperscript{100}

On April 24, 2004, the Plan was put to referendum in both the GC and TC communities.\textsuperscript{101} Although sixty-five percent of voting TCs were in favor of the Plan, seventy-five percent of voting GCs opposed the Plan.\textsuperscript{102} The failure of the Annan Plan has led to an increasing belief that resolution of the conflict must stem from Cypriot-driven negotiations, with the international community playing mainly a secondary role.\textsuperscript{103} Soon after the failure of the Annan Plan, Cyprus entered the EU on May 1, 2004 as a divided nation.\textsuperscript{104}

In May 2008, the President of the Republic, Demetris Christofias, and the President of the TRNC, Mehmet Ali Talat, stated they would work to create "a bi-zonal and bi-communal federation, with a single international personality and with a Greek Cypriot and a Turkish Cypriot constituent state enjoying equal status."\textsuperscript{105} However, whether resolution will occur remains to be seen.\textsuperscript{106} Recent opinion polls indicate that the majority of Cypriots admit that both communities are somewhat at fault and that a peaceful solution is necessary.\textsuperscript{107} Only a minority of Cypriots are proceed.

\textsuperscript{100} COUFOUDAKIS, \textit{supra} note 2, at 17.

\textsuperscript{101} See Alexandros Lordos, \textit{Rational Agent or Unthinking Follower? A Survey Based Profile Analysis of Greek-Cypriot and Turkish-Cypriot Referenda Voters, in CYPRUS: A CONFLICT AT THE CROSSROADS} 17, 17 (Thomas Diez & Nathalie Tocci eds., 2009); see also BARTLETT, \textit{supra} note 2, at 125; KAYMAK ET AL., \textit{supra} note 94, at 1.

\textsuperscript{102} See BARTLETT, \textit{supra} note 2, at 138; \textit{cf} Demopoulos, 50 EUR. CT. H.R. \textsection 16 (calculating that due to the limitations in the Annan Plan, less than six percent of the population would be able to return to their homes by the ninth year of the Plan and less than twenty percent by the nineteenth year or upon Turkey becoming a member of the EU).

\textsuperscript{103} See KAYMAK ET AL., \textit{supra} note 94, at 2.

\textsuperscript{104} See COUFOUDAKIS, \textit{supra} note 2, at 2; \textit{cf} KAYMAK ET AL., \textit{supra} note 94, at 29 (describing new developments in the peace process since March 2008).

\textsuperscript{105} KAYMAK ET AL., \textit{supra} note 94, at 29.


\textsuperscript{107} See KAYMAK ET AL., \textit{supra} note 94, at 10.
completely satisfied with the status quo.” Despite this progress, a substantial minority of the population remains committed to the prejudices of the past, and over half of surveyed GCs and TCs viewed themselves as being Cypriot only to the same or a lesser degree than they viewed themselves as being, respectively, Greek or Turkish.

In the latest TRNC presidential election, Derviș Eroğlu succeeded Mehmet Ali Talat. Frustrated by the lack of progress in negotiations, Eroğlu has expressed his belief that “we have no choice but to seriously evaluate our own options on whether to carry on with talks forever—for the sake of talking—or to stop lying to ourselves and start considering other options if we have no solution by the end of [2010].” Many Cypriots do not believe the current negotiations will resolve the conflict.

III. An Introduction to the European Court of Human Rights

A. History and Jurisdiction

In 1949, the Council of Europe (“Council”) was founded by ten countries; today, the Council has forty-seven member nations and “seeks to develop throughout Europe common and democratic principles based on the European Convention on Human Rights.” All members of the Council are signatories to the

108 See id. at 11-12 (finding that eighty-four percent of TCs and seventy-five percent of GCs are either dissatisfied with the status quo or have mixed feelings about it).

109 See id. at 10-13 (revealing that substantial minorities of both communities would be opposed to having a member of the other community as their neighbor).

110 See id. at 7.


112 Abdullah Bozkurt, Turkish Cypriot Leader Warns He Is Serious About Year’s End Deadline, TODAY’S ZAMAN (Sept. 20, 2010), http://www.todayszaman.com/tz-web/news-222111-102-turkish-cypriot-leader-warns-he-is-serious-about-years-end-deadline.html.

113 See KAYMAK ET AL., supra note 94, at 28 (describing polls finding that over half of TCs are “not at all hopeful” that the current negotiations will achieve resolution compared to twenty-nine percent of GCs; under twenty percent of each group are “very hopeful”).

Convention, as are all members of the EU. To ensure compliance with the Convention, the Council established the ECHR in 1959. The ECHR provides recourse to both states and individuals in the event that a violation of the Convention has occurred.

An interstate case may be brought under Article 33 of the Convention in the event that states “have determined not only that violations of the convention have occurred by another member but also that traditional diplomatic and political methods have not remedied the situation.” Article 34 provides for individual appeals to the ECHR with no requirement that the member state consent before the appeal can be brought. However, “[i]n all cases before a Chamber [of the ECHR], . . . a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.”

Before the ECHR considers a claim’s merits, there must be a threshold finding of admissibility. Prior to 1998, the European Commission of Human Rights (“European Commission”) determined whether applications against member states were admissible and “expressed an opinion” relating to the merits of the case. After the ratification of Protocol 11, the European

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115 See The Council of Europe, supra note 114.


118 See Convention, supra note 117, art. 34 (“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”); see also Coufoudakis, supra note 2, at 10-11 (outlining the historical evolution of what is now Article 34).

119 Convention, supra note 117, art. 36(1).

120 See id. art. 35.

121 See European Court of Human Rights, 50 Years of Activity The European Court of Human Rights – Some Facts and Figures 3 (2010), available at http://www.echr.coe.int/NR/rdonlyres/65172EB7-DE1C-4BB8-93B1-
Commission was dissolved into the ECHR, and today, cases are heard exclusively by the ECHR.\textsuperscript{122} The jurisdiction of the ECHR “extend[s] to all matters concerning the interpretation and application of the Convention and the protocols.”\textsuperscript{123} Despite the broad grant of jurisdiction, the ECHR’s ability to review a case is limited by provisions such as the exhaustion of remedies requirement in Article 35 of the Convention. Under Article 35, an application is inadmissible unless the petitioners have exhausted any adequate and effective domestic remedy available prior to pursuing review by the ECHR.\textsuperscript{124}

Since Cyprus ratified the Convention as a unified republic in 1962, the ECHR views the Convention as applicable to the entire island of Cyprus.\textsuperscript{125} As a result, “the ECHR considers northern Cyprus as a territory in which the individual rights and freedoms set out in the Convention must still be safeguarded.”\textsuperscript{126} Turkey ratified the Convention in 1954 and is, therefore, also obligated to abide by its provisions.\textsuperscript{127} Even so, Turkey remains the only state that has failed to comply with an ECHR judgment on an interstate application.\textsuperscript{128} As Turkey wishes to join the EU, it may no longer be able to avoid compliance without jeopardizing its chances for membership.\textsuperscript{129} All EU members are signatories to the Convention and are required to meet certain human rights standards before they are allowed to join.\textsuperscript{130} To satisfy this requirement, Turkey may need to demonstrate its desire to comply with ECHR judgments and to remediate its violations of the Convention.\textsuperscript{131}

\textsuperscript{122} See COUFOUDAKIS, supra note 2, at 10.
\textsuperscript{123} Convention, supra note 117, art. 32.
\textsuperscript{124} See id. art. 35 (“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.”).
\textsuperscript{125} See Özersay & Gürel, supra note 8, at 275.
\textsuperscript{126} Id.
\textsuperscript{127} See COUFOUDAKIS, supra note 2, at 33.
\textsuperscript{128} See id. at 11-12.
\textsuperscript{129} See id. at 12.
\textsuperscript{130} See id. at 33-34.
\textsuperscript{131} See FACTS AND FIGURES, supra note 121, at 4-5 (noting that around eleven percent of the cases (over 13,100) pending before the ECHR as of January 2010 were
B. Enforcement by the Committee of Ministers

The ECHR’s decisions are declaratory in nature, with the Court determining whether a violation of the Convention has occurred and issuing a binding judgment to the parties. When a state is found to have committed a violation, the Committee of Ministers ("Committee") receives the Court's final judgment and supervises its execution. The state must keep the Committee apprised of its efforts to remedy the violation, and the Committee examines the steps taken by the state, retaining authority over the case until satisfactory measures have been implemented. The Committee’s presence “as a political force applying, if necessary, political pressure on respondent States, . . . can be crucial to ensuring that the Court’s judgments do not remain a dead letter that they might, potentially, otherwise be.”

For a judgment to be executed fully, the violation must cease, the victim must be restored to his pre-violation status to the extent possible, restitution must be provided when appropriate, and future violations must be prevented. The ECHR lacks the power:

lodged against Turkey, second only to Russia at around twenty-eight percent; nearly nineteen percent of the Court’s judgments have been against Turkey; see also COUFoudakis, supra note 2, at 11 (finding that ten of the twenty interstate applications that the Council of Europe handled in its first fifty years involved Turkey, four of which were brought by Cyprus as a result of the aftermath of the 1974 invasion); Ed Bates, Supervising the Execution of Judgments Delivered by the European Court of Human Rights: The Challenges Facing the Committee of Ministers, in EUROPEAN COURT OF HUMAN RIGHTS: REMEDIES AND EXECUTION OF JUDGMENTS 49,90-91 (Theodora Christou & Juan Pablo Raymond, eds., The British Institute of International and Comparative Law 2005) (referencing Turkey’s failure to implement the ECHR judgments).

132 See Tom Barkhuysen & Michiel van Emmerik, A Comparative View on the Execution of Judgments of the European Court of Human Rights, in EUROPEAN COURT OF HUMAN RIGHTS: REMEDIES AND EXECUTION OF JUDGMENTS, supra note 131, at 1, 3; see also Convention, supra note 117, art. 46(1) ("The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.").

133 See Convention, supra note 117, art. 46(2); see also Barkhuysen & van Emmerik, supra note 132, at 20; Murray Hunt, State Obligations Following from a Judgment of the European Court of Human Rights, in EUROPEAN COURT OF HUMAN RIGHTS: REMEDIES AND EXECUTION OF JUDGMENTS, supra note 131, at 25, 37 (Theodora Christou & Juan Pablo Raymond, eds., 2005).

134 See Hunt, supra note 133, at 37.

135 Bates, supra note 131, at 50.

136 See Barkhuysen & van Emmerik, supra note 132, at 3; see also Hunt, supra note
to quash national legislation or decisions which are contrary to the ECHR, nor does it have the power to revise final decisions of national courts... issue certain orders to the State party to the Convention... [or] make recommendations to the condemned State as to which steps it should take to remedy the consequences of the treaty violation.\textsuperscript{137}

Rather, the state chooses how to comply with an ECHR judgment within certain parameters and subject to the supervision of the Committee.\textsuperscript{138} Under the Convention system, "it is for the Contracting States, in the first instance, to decide how best to secure the substance of the Convention rights in their domestic legal system, and also to choose the means by which they comply with judgments of the Court."\textsuperscript{139} Although restitution is the preferred type of reparation, reparations can take the form of compensation or satisfaction if restitution is not possible or would be disproportionately burdensome in comparison with the benefits.\textsuperscript{140}

Despite the ECHR's limited role in dictating a state's method of compliance with its rulings, Article 41 of the Convention "empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate" if a state's domestic laws provide for only partial reparations.\textsuperscript{141} As a result, the state must

\textsuperscript{133} at 32.

\textsuperscript{137} Barkhuysen & van Emmerik, supra note 132, at 3.

\textsuperscript{138} See id. at 3-4; see also Hunt, supra note 133, at 37.

\textsuperscript{139} Hunt, supra note 133, at 25 ("It is well settled as a matter of Convention case law that the Court of Human Rights has no jurisdiction under Article 41 to issue directions to Contracting States on the measures or steps which they should take to rectify violations. The Court has consistently considered that it is not empowered to do so under the Convention, since responsibility for supervising the execution of judgments lies with the Committee of Ministers... Judgments of the European Court of Human Rights are 'essentially declaratory in nature, and leave to the state concerned the choice of means to be used in its domestic legal system for the performance of its obligation' to abide by the judgment... The Court does not tell states how to remedy any violations that it finds, and has always turned down requests for specific advice as to measures... "); see also id. at 31.

\textsuperscript{140} See id. at 28-29.

\textsuperscript{141} Hunt, supra note 133, at 32; see also Convention, supra note 117, art. 41 ("If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.").
pay the amount awarded even if the payment is inconsistent with its internal laws. The respondent state is afforded three months to satisfy the judgment, and failure to do so during that period will lead to the accumulation of interest on the judgment. When compliance is achieved, the Committee adopts a resolution to indicate to the public that the state has fulfilled the judgment.

In addition to monitoring whether the judgment has been executed in an individual case, the Committee determines whether governmental reforms have occurred to ensure future compliance. The Committee’s role is ongoing “until it has satisfied itself—on the basis of information supplied by the State—that the State has fulfilled its obligations arising from the judgment.” When a state fails to properly execute a judgment, the Committee may take measures to encourage compliance such as “political condemnation, suspension of the right to vote and ultimately expulsion from the Council of Europe.” Although the majority of judgments are eventually executed, “more and more States are becoming increasingly reluctant to execute judgments against them and try to find ways to minimize the possible impact of these judgments.” In the event that the judgment’s proper execution is being delayed or obstructed, the Committee may adopt an Interim Resolution requiring certain measures to be taken to address the violation. Interim Resolutions draw attention to the failure of a state to execute an ECHR judgment and help signify the Committee’s commitment to ensuring compliance. Although an individual party to a case “has no formal role” in supervising enforcement, the party may attempt to engage the Committee in overseeing execution.

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142 See Convention, supra note 117, art. 41.
143 See Bates, supra note 131, at 73.
144 See Barkhuysen & van Emmerik, supra note 132, at 20.
145 See id.
146 Id.
147 Id. at 20.
148 Id.
149 See Hunt, supra note 133, at 37-39.
150 See Bates, supra note 131, at 61.
151 Barkhuysen & van Emmerik, supra note 132, at 21; cf. COUFOUDAKIS, supra note 2, at 58 (criticizing the Committee as sometimes placing “political, security, and economic priorities ahead of its responsibility to promote and protect human rights” and
Even when the Committee determines that a judgment has been fully executed, there are concerns that the lack of oversight and increasing burdens on the Committee may obscure the fact that a violating party has not actually complied with the ECHR judgment. For example, the ECHR has held that it "is not willing to override a decision of the Committee of Ministers that a certain judgment has been properly executed," as the Committee alone deals with the execution of judgments. Therefore, once the Committee has deemed a judgment satisfied, the ECHR will not revisit it or interfere with the Committee's finding. This "inevitably opens up... room for argument about whether a State has done enough to comply with a particular judgment against it." Moreover, as the number of member states increases, the ability of the Committee to supervise the execution of judgments will be greatly diminished.

Turkey's failure to comply with ECHR judgments has highlighted the fact that the Court's judgments are not always "unequivocally respected," and that without adequate resources, the Committee's ability to combat such instances of noncompliance may be limited.

IV. The Role of the European Court of Human Rights in Cyprus

The GC and TC viewpoints regarding the proper role of the ECHR in the Cyprus Problem are fundamentally at odds with each other. For example, the GCs view the Convention violations as an issue of human rights that is divorced from the issue of a political settlement and negotiations, whereas the TCs believe that the two issues cannot be treated in isolation from each other, and that GC attempts to appeal to the ECHR are counterproductive to a comprehensive settlement of the Cyprus Problem. Despite TC

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152 Barkhuysen & van Emmerik, supra note 132, at 21 (referencing Olsson II v. Sweden and the ECHR's inability or unwillingness to address a complaint that a previous judgment was not executed).

153 Hunt, supra note 133, at 25.

154 See Bates, supra note 131, at 57-60.

155 See id. at 57-59. Noncompliance can have far-reaching consequences and can undermine the effectiveness of ECHR judgments in general. Id. at 72.

156 See Özersay & Gürel, supra note 8, at 274-75 (explaining further that U.N.
opposition to the ECHR’s involvement, many applications have been filed by either Cyprus or individual GCs against Turkey in recent years. The GC government has been involved in all of these judgments as either a party or as a third party intervening in the application.\textsuperscript{157}

Emphasizing that the TRNC controls northern Cyprus, Turkey has defended these cases by claiming that it has not acted with governmental authority in Cyprus and that it is not responsible for Convention violations occurring on Cypriot soil.\textsuperscript{159} Rejecting this argument, the ECHR has found that Turkey exercises “\textit{de facto} jurisdiction” in northern Cyprus.\textsuperscript{160} As a result of Turkey’s large military presence in the region, the Court has held Turkey responsible for the actions and policies of the TRNC.\textsuperscript{161} Underlying the Court’s reasoning was its fear that failing to hold Turkey responsible would make it virtually impossible to safeguard human rights in northern Cyprus.\textsuperscript{162}

Consistently finding that Turkey’s actions in Cyprus violated multiple provisions of the Convention, the ECHR has issued judgments in favor of GC applicants and awarded just satisfaction.\textsuperscript{163} Nevertheless, overseeing the enforcement of the ECHR judgments has been a particularly troublesome task for the Committee.\textsuperscript{164} Turkey’s noncompliance with the judgments and its failure to prevent further violations of the Convention have resulted in the ECHR addressing substantially similar issues in


\textsuperscript{158} \textit{Özersay} \& \textit{Gürel}, \textit{supra} note 8, at 273.

\textsuperscript{159} See \textit{Loizidou} 1997, 23 Eur. H.R. § 30; see also \textit{Özersay} \& \textit{Gürel}, \textit{supra} note 8, at 276.

\textsuperscript{160} See \textit{Loizidou} 1997, 23 Eur. H.R. § 50; see also \textit{COUFOUDAKIS, supra} note 2, at 38; see also \textit{Özersay} \& \textit{Gürel}, \textit{supra} note 8, at 277.


\textsuperscript{162} See \textit{Özersay} \& \textit{Gürel}, \textit{supra} note 8, at 277 (referencing the Republic’s inability to enforce the Convention in the TRNC).

\textsuperscript{163} See, e.g., \textit{See Loizidou} 1997, 23 Eur. H.R.

\textsuperscript{164} See Bates, \textit{supra} note 131, at 97 (stating that “[f]ull execution of the judgments may never be possible” and that “the Convention system of human rights protection may reach its limitations in the context of political situations”).
many GC applications, some of which would have been unnecessary if Turkey had taken “appropriate general measures” following the first judgment finding a violation.\(^{165}\)

There has recently been a new twist in ECHR case law involving Cyprus. For a case to be admissible before the ECHR, the applicant must have exhausted all viable domestic remedies before filing an application.\(^{166}\) Until recently, the ECHR held that the TRNC and Turkey had failed to provide an adequate remedy and that GCs could bring their applications directly to the ECHR.\(^{167}\) To be considered adequate, the remedy would have to “be shown to offer individuals reasonable prospects of success in preventing and/or redressing violations of the Convention.”\(^{168}\) In the 2010 *Demopoulos* decision, however, the ECHR concluded the IPC was an adequate domestic remedy; as a result, the cases of GCs who failed to apply to the IPC before filing with the ECHR were inadmissible due the failure to comply with the exhaustion requirement.\(^{169}\)

The *Demopoulos* decision was in part necessitated by the vast number of pending GC applications before the Court.\(^{170}\) Despite *Demopoulos*, the ECHR and the Committee continue to play an ongoing role in the Cyprus Problem. Not only are some of the judgments issued by the ECHR prior to *Demopoulos* still unexecuted, but *Demopoulos* only applies to GCs whose applications had not been deemed admissible prior to the creation of the IPC.\(^{171}\) Nonetheless, GCs fear that by allowing the TRNC to create a remedy that can preclude the ECHR’s jurisdiction, there is a danger of the implicit recognition of the TRNC and of

\(^{165}\) *See id.* at 67-68.

\(^{166}\) *See Convention, supra* note 117, art. 35.

\(^{167}\) *See Demopoulos*, 50 EUR. CT. H.R. §§71-75, 127.

\(^{168}\) Özersay & Gürel, *supra* note 8, at 287.

\(^{169}\) *See Demopoulos*, 50 EUR. CT. H.R. § 127; Özersay & Gürel, *supra* note 8, at 285.

\(^{170}\) *See Demopoulos*, 50 EUR. CT. H.R. § 69; *see also* Xenides-Arestis 2005, *supra* note 157, §37 (commending the steps taken by the Government to provide an opportunity for domestic redress for this applicant and others claiming similar violations that have effectively satisfied the requirements for admissibility before the Court).

\(^{171}\) *See Xenides-Arestis 2005, App. No.* 46347/99 § 37; *see also* Demopoulos, 50 EUR. CT. H.R. §§ 63, 80.
adverse consequences to their property rights.\textsuperscript{172}

\textit{A. The Law of the TRNC}

Although the majority of land in northern Cyprus was owned by GCs prior to the invasion, the land was subsequently confiscated and issued to TCs and Turks settling in the region after GCs fled south.\textsuperscript{173} Article 159 of the TRNC Constitution, enacted in May 1985, attempted to formalize a change in ownership of the property.\textsuperscript{174} Article 159(1)(b) provides that:

\begin{quote}
[a]ll immovable properties, buildings and installations which were found abandoned on 13 February 1975 when the Turkish Federated State of Cyprus was proclaimed or which were considered by law as abandoned or ownerless after the abovementioned date or which should have been in possession or control of the public even though their ownership had not yet been determined . . . and . . . situated within the boundaries of the TRNC on 15 November 1983, shall be the property of the TRNC notwithstanding the fact that they are not so registered in the books of the Land Registry Office.\textsuperscript{175}
\end{quote}

As a result of this Constitutional provision, GCs were determined to no longer own their property in northern Cyprus, despite the fact that they held title to the property.\textsuperscript{176} However, the decisions of the European Commission and the ECHR have “held that acts by unrecognized political entities [such as the TRNC] were invalid and in violation of the European Convention,” confirming that GCs remained the rightful owners and that Article 159(1)(b) failed to transfer or alter ownership.\textsuperscript{177}

Despite the ECHR’s finding in favor of GC ownership, the TRNC issued invalid titles to these properties and allowed them to be transferred or sold to third parties, including foreign nationals.\textsuperscript{178} A construction boom in northern Cyprus resulted,\textsuperscript{179}

\begin{footnotes}
\item[172] See Özersay & Gürel, supra note 8, at 285-86.
\item[173] See COUFOUDAKIS, supra note 2, at 70.
\item[174] See id.
\item[175] TRNC Constitution art. 159(1)(b)-(c).
\item[176] See Loizidou 1997, 23 EUR. CT. H.R. at 519-520.
\item[177] COUFOUDAKIS, supra note 2, at 70.
\item[178] See id. at 70, 73 (listing evidence of the “massive scale of usurpation,
bolstered in the early 2000s by the fact that approval of the Annan Plan would have led to the withdrawal of pending property cases against Turkey in the ECHR. In response to the increased construction and property sales, the government of the Republic "undertook a massive information campaign... cautioning foreign buyers about the risks of buying property in occupied Cyprus... Cypriot ambassadors have also communicated with influential media [of other countries]... explaining the risks and the law regarding illegal property purchases."

Unable to return to their homes and concerned by the TRNC's seizure and resale of their property, dispossessed GCs have filed around 1,400 property cases in the ECHR against Turkey. Due to the large number of pending cases, the ECHR asked Turkey to create a remedy to address its violations of the Convention in Xenides-Arestis v. Turkey. In part, the development of an adequate remedy was a practical necessity due to the large number of pending applications and the limited resources available to ensure effective execution of ECHR judgments.

In June 2003, prior to Xenides-Arestis, the TRNC attempted to provide a domestic remedy for GCs alleging violations of their property rights by promulgating the "Law for the Compensation, Exchange and Restitution of Immovable Properties Which are Within the Scope of Sub-Paragraph (B) of Paragraph 1 of Article...

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179 See id. at 70-71 (arguing that the Plan "encouraged illegal property transfers... by severely restricting the right to restitution and by legalizing unlawful property transfers that had taken place").

180 Id. at 71, 74-75 (alleging that the TRNC "used the distribution and sale of stolen properties to buyoff political influence and to create dependence on the occupation regime by settlers and Turkish Cypriots" to encourage settlement by Turkish citizens, to attract foreign investment, and to discourage GCs from reclaiming their land).

181 See Özersay & Gürel, supra note 8, at 287.


183 See Özersay & Gürel, supra note 8, at 289; see also Demopoulos, 50 EUR. CT. H.R. § 85 ("[T]he 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.").
159 of the Constitution” ("2003 Law").

Although the purpose of the 2003 Law was to compel GCs to resort to a domestic remedy prior to petitioning the ECHR, the ECHR made it clear that a potential applicant was not required to exhaust domestic remedies “if [the] available remedies are inadequate or ineffective, or if the ‘national authorities’ have failed to investigate misconduct or ‘state agents’ have inflicted harm.” The ECHR found the proffered remedy to be inadequate in Xenides-Arestis, and the 2003 Law was subsequently amended in December 2005 to address the ECHR’s concerns. The stated purpose of the revised Law ("2005 Law") is:

- to regulate the necessary procedure and conditions to be complied with by persons in order to prove their rights . . .
- to movable and immovable properties . . . as well as, the principles relating to restitution, exchange of properties, and compensation . . . having regard to the principle of . . .
- bizonality . . . and without prejudice to any property rights or the right to use property under the Turkish Republic of Northern Cyprus legislation or to any right of the Turkish Cypriot People which shall be provided by the comprehensive settlement of the Cyprus Problem.

The 2005 Law created the IPC and allowed all persons with a claim to covered property to bring an application requesting restitution, exchange, or compensation to the IPC within two years of the law’s passage. Individuals who applied to the ECHR prior to the promulgation of the 2005 Law are entitled to apply to

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184 COUFOUDAKIS, supra note 2, at 71.
185 See id. at 71, 73.
186 Id. at 73; Convention, supra note 117, art. 35.
187 See Xenides-Arestis 2005, App. No. 46347/99 §§ 5, 10; see also Özersay & Gürel, supra note 8, at 287; COUFOUDAKIS, supra note 2, at 73.
189 See id. § 11(1).
190 See id. § 4(1); see also Demopoulos, 50 EUR. CT. H.R. § 35 (indicating that the deadline for bringing a claim before the IPC has been extended to December 21, 2011).
the IPC as well.\textsuperscript{191} The applicant has the burden of proof and must demonstrate beyond a reasonable doubt that the property was registered in the applicant’s name prior to July 20, 1974, or that he or she inherited the property.\textsuperscript{192} Applicants must also prove that they had to abandon their property “due to conditions beyond [their] own volition.”\textsuperscript{193} Furthermore, the individual currently holding the rights to the property or the right to use the property may participate in the IPC proceedings.\textsuperscript{194} The IPC determines, after reviewing the evidence, whether to provide restitution, offer exchange for the property, or pay compensation; the IPC may also award compensation for loss of use of the property or for non-pecuniary damages.\textsuperscript{195}

Although the IPC purports to allow aggrieved GCs to choose between restitution, property exchange, or compensation,\textsuperscript{196} restitution may not be available in all circumstances.\textsuperscript{197} For example, an immovable property that has not been transferred to another “owner” can be restituted “provided that the restitution of such property . . . shall not endanger national security and public order and that such property is not allocated for public interest reasons and . . . is outside the military areas.”\textsuperscript{198} If the property has been transferred to an individual, it may be restituted “[i]f the increase in the value of the immovable property due to improvement made on such property between the date it was abandoned and the date of application . . . for restitution, is less

\textsuperscript{191} See TRNC Law, supra note 188, § 21.
\textsuperscript{192} See id. § 6.
\textsuperscript{193} Id. § 6(6).
\textsuperscript{194} See id. § 7.
\textsuperscript{195} See id. § 8; see also Demopoulos, 50 EUR. CT. H.R. § 36 (“The IPC has the duties and powers to examine and reach decisions on applications, determine the amount and method of payment of compensation, collect written or oral testimony or hear witnesses, summon any person residing in the ‘TRNC’ to give testimony or produce any document in his possession, to compel a person to give evidence or produce a document in his possession, to award expenses to any persons summoned (section 13) . . . [In addition, [t]he Ministry responsible for financial affairs must make provision under a separate item of the Budget Law for each year for the payment of compensation awarded by the IPC and other expenses incurred by the application of the Law (section 18).”).
\textsuperscript{196} See Özersay & Gürel, supra note 8, at 287.
\textsuperscript{197} See id.
\textsuperscript{198} TRNC Law, supra note 188, § 8(1).
than the value of the property when it was abandoned” or if there 
has been no increase in value; however, the property may not be 
restituted if it has been “allocated for public interest or social 
justice purposes,” or if it is a property that a person received in 
exchange for property he or she had to abandon in the South. In 
addition to these limits on whether or not restitution is feasible, the 
2005 Law also provides that:

the decision for restitution of such property may take effect 
after the settlement of the Cyprus Problem, in line with 
the provision of the settlement. In such a case, the person 
who is in possession . . . of the property . . . would have to 
abandon the property . . . unless such person has [not] been 
provided with compensation or alternative accommodation 
under the provisions of the settlement . . . Natural or legal 
persons who under the legislation of the Turkish Republic 
of Northern Cyprus, are in possession or hold the 
ownership of property to be reinstated after a settlement, 
shall have the right to be compensated for the damage 
caused by such a decision of the Commission.

Because of this provision, property that is deemed subject to 
restitution will not actually be returned to its original owners until 
the Cyprus Problem is resolved, notwithstanding the decision of 
the IPC. In addition, the 2005 Law provides that restitution may 
not occur to the detriment of citizens of the TRNC without 
compensation.

Property that is more valuable now than it was at the time of 
abandonment due to an improvement may not be restituted; 
instead, exchange or compensation may be awarded as well as 
damages for loss of use or non-pecuniary damages, if 
applicable. As most GCs wish to regain possession of their 
property and to retain title, the limitations on restitution under the 
2005 Law increase their concern that the focus of the IPC may be 
primarily compensation and property-exchange rather than the

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199 Id. § 8(2).
200 Id. § 8(2)(A).
201 See id.
202 See id.
203 See id. § 8(3).
desired restitution. Consequently, the GC government has rejected the IPC and encouraged citizens to do so as well.

An applicant seeking compensation under the 2005 Law may be awarded compensation and non-pecuniary damages based on the property's market value on July 20, 1974, loss of income, and any increase in the value of the property in the years since 1974 that is not based on an improvement to the property. An additional relevant factor is whether the applicant possesses property in southern Cyprus owned by TRNC citizens. Upon receiving compensation or property exchange, applicants "can under no condition, make a claim of right of ownership" over the property for which they have received compensation or exchange; title is eliminated, and restitution is no longer an option. Parties that find the decision of the IPC unsatisfactory are permitted to appeal to the High Administrative Court and ultimately to the ECHR.

The IPC consists of a President, a Vice-President, and five to seven Members appointed for five-year terms. The President of the TRNC nominates the Members, and the Supreme Council of Judicature chooses among the nominees. In order to prevent bias and to increase legitimacy, the 2005 Law requires the exclusion from IPC membership of "[a]ny person directly or indirectly deriving any benefit from immovable properties on which rights are claimed by those who had to move from the north of Cyprus in 1974, abandoning their properties." To further ensure impartiality, the IPC is required to have at least two

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204 See Özersay & Gürel, supra note 8, at 288; COUFOUDAKIS, supra note 2, at 69-70 (noting that one reason that the Annan Plan failed was that it provided for the resolution of the property issue through compensation and property exchange rather than primarily through restitution).

205 See Özersay & Gürel, supra note 8, at 288.

206 See TRNC Law, supra note 188, § 8(4).

207 See id.

208 See id. § 8(5) (explaining the process of property exchange).

209 Id. § 10.

210 See id. § 9.

211 See id. § 11(1).

212 See TRNC Law, supra note 188, § 12.

213 See id. § 11(1)(A) (providing that Members may be re-elected).

214 Id. § 11(1)(B); see Özersay & Gürel, supra note 8, at 287.
Members who are not nationals of the TRNC, the United Kingdom, Greece, Turkey, or the Republic. However, despite these provisions, decisions are made upon the vote of a simple majority of Members attending the meeting. Although two of the individuals appointed to the IPC must be citizens of an uninvolved nation, this provides little guarantee of neutrality as the remaining Members could easily constitute a majority. Similarly, even though individuals appointed to the IPC may not have personally benefitted from abandoned GC properties, this may be insufficient to safeguard GC rights and to ensure justice, as few, if any, Cypriots are truly objective when it comes to the Cyprus Problem.

The decisions of the IPC are binding on applicants, subject to the outcome of appeals. The 2005 Law recognizes that some individuals will not apply to the IPC and provides that their rights “shall be determined and dealt with in accordance with the framework and principles laid down in a political settlement regarding the Cyprus issue.”

As of November 2009, 433 cases had been brought before the IPC, eighty-five of which had been resolved, mostly by “friendly settlement.” Compensation has overwhelmingly been the method of resolution, with over seventy claims being settled in this manner for a total of about € 47 million; restitution as well as compensation were provided for in four cases, property exchange in two, and restitution upon the political settlement of the Cyprus problem in one.

In Demopoulos, the ECHR determined that the redress provided for by the TRNC in the 2005 Law constitutes an “efficient domestic remedy” as required by the Convention. Since the Court found the IPC to be satisfactory, cases pending
before the ECHR will be redirected to the IPC, and the ECHR will no longer be available to GCs who have not exhausted the IPC as a domestic remedy.\textsuperscript{224} GCs believe that this finding may “conceal the ‘illegality’ of the TRNC and lead to less international pressure on Turkey despite the presence of its military troops in Cyprus.”\textsuperscript{225} However, the ECHR was clear that acceptance of local remedies was not to be confused with acceptance of the TRNC.\textsuperscript{226} As the ECHR “has confined itself to ruling to uphold the Convention’s ‘object and purpose,’ namely the protection of \textit{individual} human rights,” rather than to consider the political arguments of each side, the ECHR is less concerned with the legality of the TRNC as the provider of the remedy than with the nature and scope of the remedy itself.\textsuperscript{227}

\textit{B. The Early Applications}

The role of the ECHR and the European Commission in Cyprus began to take shape soon after the Turkish invasion. Although these early decisions did not emphasize property violations as much as subsequent cases, they are useful to understanding the ECHR’s approach to the Cyprus Problem and the framework within which the ECHR made its decisions. In Cyprus’ first two interstate applications against Turkey in the 1970s, the European Commission found that GCs had been deprived of their possessions and evicted under the order of Turkey; according to the European Commission, the purpose of Turkey’s actions was “to create fear, to force the Greek Cypriots to leave for the safety of the government-controlled areas, and to eradicate the Greek Cypriot cultural heritage in the occupied areas.”\textsuperscript{228} The European Commission found evidence of repeated rapes of GC women and children\textsuperscript{229} and that “these rapes were not isolated cases of indiscipline,” as there was no evidence that the Turkish authorities acted to discipline rapists or to prevent future

\textsuperscript{224} See Özersay & Gürel, \textit{supra} note 8, at 287-88.
\textsuperscript{225} Id. at 288.
\textsuperscript{226} See COUFOUDAKIS, \textit{supra} note 2, at 72; Demopoulos, 50 EUR. CT. H.R. § 96.
\textsuperscript{227} Özersay & Gürel, \textit{supra} note 8, at 289.
\textsuperscript{228} COUFOUDAKIS, \textit{supra} note 2, at 42.
\textsuperscript{229} See id. at 43 (revealing that rape victims ranged in age from twelve to seventy-one and included pregnant and mentally disabled persons).
rapes. As a result, the European Commission found Turkey guilty of violating Article 3 of the Convention, which prevents torture and inhumane or degrading treatment. In addition, Turkey violated the "right to life" safeguarded by Article 2 of the Convention as there was evidence that unjustified "killings were committed on a 'substantial scale.'" Individuals held in captivity were denied food, water, and medical treatment, and there was evidence of torture of civilians held in Turkish detention even after hostilities ceased.

The European Commission noted that although GCs were detained in both Cyprus and in Turkey after being deported, Turkey had failed to provide complete lists of detainees and had violated Article 5, which protects the right to liberty and security of the person. The European Commission also found that GC property was taken and that no sufficient remedies were available. In later cases, the European Commission found violations of the nondiscrimination provisions of the Convention and continuing violations of Article 2 due to Turkey's failure to investigate the fate of the missing GCs effectively.

The modern era of ECHR cases began with Loizidou v. Turkey. Although many GC applications have asserted violations of the Convention's provisions regarding humane treatment, the Court's main focus has been on violations of GC property rights.

230 See id. ("Evidence was also presented where women . . . were collected and placed in separate rooms of empty houses to be raped repeatedly by Turkish soldiers including officers. Some rapes took place in the presence of family members and other children.").

231 See id.

232 Id. at 44 (finding that these killings included bombing raids on hospitals and other civilian targets where napalm was used).

233 See id. at 44-45.

234 COUFOLDAKIS, supra note 2, at 46, 54 (describing the European Commission's finding that a number of missing GCs had been identified as Turkish prisoners and that "there was a 'presumption of responsibility' by Turkey for the fate of persons in its custody").

235 See id. at 75.

236 See id. at 76.

237 See id. at 55 ("Turkey had a positive obligation to conduct effective investigations of its own . . . [which] could not be discharged by contributing to the work of the CMP.").
C. Loizidou v. Turkey

Titina Loizidou was a GC who grew up in northern Cyprus and continued to own land there despite her permanent residence in Nicosia. Loizidou filed a petition with the ECHR in 1989, claiming that Turkish forces prevented her from accessing her property in northern Cyprus in violation of Article 1 of Protocol No. 1 of the Convention. Loizidou also alleged that her right to peaceful enjoyment of her possessions and her right to control and use her property had been affected as she had had no access to it since 1974. Although Loizidou did not reside in northern Cyprus at the time of the invasion, she claimed that prior to the occupation in 1974, she began work on a plot of land she owned in Kyrenia, located in northern Cyprus, to build a home for her family. As a result, Loizidou claimed that her Article 8 right to respect for private and family life was violated.

Turkey protested the fact that it was being held responsible for events occurring within Cyprus; although it conceded that Loizidou’s loss of control and access to her property related to the occupation of northern Cyprus and the existence of the TRNC, it denied that it was responsible and claimed that Turkish forces in Cyprus were “acting exclusively in conjunction with and on behalf

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239 See Loizidou 1997, 23 Eur. H.R. at 513; see also Convention, supra note 117, art. 1, Protocol 1 (“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”); COUFOUDAKIS, supra note 2, at 77.


241 See id. at 518.

242 See Loizidou v. Turkey, 20 Eur. Ct. H.R. 99, 119 (1995) [hereinafter Loizidou 1995]; see also Convention, supra note 117, art. 8 (“Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary . . . in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”).
of the allegedly independent and autonomous ‘TRNC’ authorities.” The ECHR rejected this claim, finding:

\[\text{the concept of “jurisdiction” under Article 1 of the Convention is not restricted to the national territory of the Contracting States. Accordingly the responsibility of Contracting States can be involved by acts and omissions of their authorities which produce effects outside their own territory. In conformity with the relevant principles of international law governing State responsibility, the responsibility of a Contracting State can also arise when as a consequence of military action—whether lawful or unlawful—it exercises effective control of an area outside its national territory. The obligation to secure, in such an area the rights and freedoms set out in the Convention, derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration.}\]

As northern Cyprus had over 30,000 armed Turkish forces stationed in the region, the ECHR held it was justified in finding that Turkey exercised “effective overall control” of northern Cyprus. As a result, the ECHR concluded that there was no need “to determine whether . . . Turkey actually exercise[d] detailed control over the . . . ‘TRNC.’” The Court imputed responsibility to Turkey for the TRNC’s actions and policies and found “[t]hose affected by such policies or actions . . . come within the ‘jurisdiction’ of Turkey for the purposes of Article 1 of the Convention;” therefore, Turkey’s

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244 See id. at 529-30.
245 Id. at 515.
246 See id. at 519.
247 Özersay & Gürel, supra note 8, at 276-77.
248 Loizidou 1997, 23 Eur. H.R. at 531; see also COUFOUDAKIS, supra note 2, at 77.
249 See Loizidou 1997, 23 Eur. H.R. at 532-33; see also COUFOUDAKIS, supra note 2, at 77 (indicating the Court found Turkey, an occupying power, to be responsible for the TRNC’s actions as TC officials were a “subordinate local administration” of Turkey).
obligations under the Convention extend to northern Cyprus.\footnote{Loizidou 1997, 23 Eur. H.R. at 531; see also Özersay & Gürel, supra note 8, at 275 (explaining that the Convention is "an instrument of international law" that "is not concerned with the relations between states but with the rights of individuals").}

The Court noted the lack of international recognition\footnote{See Loizidou 1997, 23 Eur. H.R. at 520-21, 527.} of the TRNC and determined that Article 159 of the TRNC Constitution did not validly operate to remove title from GCs.\footnote{See id. at 514, 520, 527 ("It is evident from international practice and the various, strongly worded resolutions that the international community does not regard the 'TRNC' as a State under international law and that the Republic of Cyprus has remained the sole legitimate Government of Cyprus—itself bound to respect international standards in the field of the protection of human and minority rights.").} As a result, Loizidou was still the legal owner of her land despite the TRNC’s attempt to claim title over all GC “abandoned” property in northern Cyprus.\footnote{Id. at 527.} However, the ECHR indicated that certain acts of the TRNC “could be considered valid by the Court if they conformed with and served to uphold the purposes of Convention.”\footnote{Özersay & Gürel, supra note 8, at 282.} The Court was careful to limit its interpretation to discussing the reach of the Convention and “bypassed the question” of the legality of the TRNC, finding there was no need to consider the legality of the 1974 invasion in order to establish state responsibility.\footnote{Id. at 281.}

Once the ECHR determined that Turkey could be imputed with responsibility, it noted that Turkey had not recognized the jurisdiction of the ECHR prior to 1990.\footnote{See Loizidou 1997, 23 Eur. H.R. at 521 (describing Turkey’s recognition of the jurisdiction of the ECHR pursuant to Article 46 in January 1990 and noting that the ECHR found facts occurring prior to that date were excluded from its consideration).} As a result, jurisdiction only extended to Loizidou’s claim of a continuing violation of her property rights since January 22, 1990, the date on which Turkey accepted ECHR jurisdiction.\footnote{Id. at 522-23.} Although the TRNC’s 1985 Constitution declared her land to belong to the TRNC, the Court found that the denial of Loizidou’s property rights could amount to a continuing violation of the Convention.\footnote{See id. at 524.}
However, the ECHR determined that there was no violation of Article 8 as her home was in Nicosia, rather than Kyrenia, at the time of the invasion.\(^{259}\) Her plan to build a residence on the land in the future was insufficient to constitute an Article 8 violation.\(^{260}\) As to the alleged violation of Article 1 of Protocol No. 1, the ECHR found that the denied access could be imputed to Turkey\(^{261}\) and that a breach had occurred.\(^{262}\) Though Loizidou remained the owner of the land, she “has been refused access to the land since 1974, [and] she has effectively lost all control as well as all possibilities to use and enjoy her property.”\(^{263}\) The Court found that the “interference cannot...be regarded as either a deprivation of property or a control of use...However, it clearly falls within...an interference with the peaceful enjoyment of possessions.”\(^{264}\) Additionally, the Court indicated that Turkey failed to explain how the need to provide housing for TC refugees “could justify the complete negation of the applicant’s property rights in the form of a total and continuous denial of access and a purported expropriation without compensation.”\(^{265}\) The ECHR also noted that no effective local remedies were available.\(^{266}\)

Loizidou claimed compensation for both pecuniary and non-pecuniary damages, including her costs and expenses.\(^{267}\) Under the Convention:

[i]f the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the...Convention, and if the internal law of the said Party allows only partial reparation...

\(^{259}\) See Loizidou 1997, 23 Eur. H.R. at 119 (“The fact that she is prevented from returning to Kyrenia does therefore not affect her right to respect for her home within the meaning of Article 8.”).

\(^{260}\) See Loizidou 1997, 23 Eur. H.R. at 533-34.

\(^{261}\) See Loizidou 1997, 23 Eur. H.R. at 120.


\(^{263}\) Id. at 533.

\(^{264}\) Id.

\(^{265}\) Id.

\(^{266}\) See COUFODAKIS, supra note 2, at 77.

\(^{267}\) See Loizidou 1997, 23 Eur. H.R. at 534 (stating that Loizidou claimed pecuniary damages for loss of income on the land and non-pecuniary damages of a punitive nature against Turkey).
to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.\footnote{268} The ECHR ultimately ordered Turkey to pay Loizidou damages of $1.5 million for the interference with her ability to use and enjoy her property; in addition, Loizidou retained title to the property.\footnote{269} It is important to keep in mind that compensation was provided based only on the notion of a continuing violation present since January 22, 1990; no compensation was provided for violations occurring prior to that date.\footnote{270} The Court rejected Turkey’s argument that issues of compensation and property rights could only be settled through bi-communal negotiations and that an award of just satisfaction under the Convention would hinder a settlement.\footnote{271} The Court also emphasized the difficulty in determining the value of property given the “volatility of the property market and its susceptibility to influences both domestic and international.”\footnote{272}

Despite the judgment, Turkey failed to comply within the required three-month period following the Court’s decision.\footnote{273} As a result, the Committee adopted an interim resolution emphasizing that Turkey was required to fulfill the judgment in October 1999.\footnote{274} After Turkey yet again failed to execute the judgment, an additional resolution was passed nine months later stating that Turkey had an “unconditional obligation” to abide by the court’s decisions.\footnote{275} The Committee emphasized that by failing to satisfy the judgment in the \textit{Loizidou} case, Turkey displayed a “manifest disregard . . . of its obligations as a High Contracting Party and as a member of the Council of Europe,” which the Committee called “unprecedented.”\footnote{276} A final interim resolution the following year emphasized that the Committee would ensure that Turkey

\footnote{268}{Id.}
\footnote{269}{See COUFOUDAKIS, supra note 2, at 77.}
\footnote{270}{See Loizidou v. Turkey, App. No. 15318/89, 23 EUR. CT. H.R. CD5 § 31 (1998).}
\footnote{271}{See id. § 31.}
\footnote{272}{Id. § 33.}
\footnote{273}{See Bates, supra note 131, at 73.}
\footnote{274}{See COUFOUDAKIS, supra note 2, at 79.}
\footnote{275}{Id.}
\footnote{276}{Id.}
complied with the judgment to the fullest extent possible.\textsuperscript{277} Despite the public condemnation of Turkey, it appeared that the parties “had reached a complete impasse with the Turkish government disputing the decision outright and ignoring three Interim Resolutions from the Committee of Ministers.”\textsuperscript{278}

However, Turkey ultimately complied “at the eleventh hour” in December 2003, due to a threat of censure by the Council of Europe\textsuperscript{279} and the consequences that noncompliance would have on its application for EU accession.\textsuperscript{280} Following the substantial judgment in \textit{Loizidou}, Turkey and the TRNC became more interested in developing a domestic remedy in order to preclude ECHR jurisdiction.\textsuperscript{281} Turkey did not want to risk additional costly judgments and the political backlash associated with \textit{Loizidou}; as ECHR jurisdiction is predicated on the exhaustion of domestic remedies, creating a mechanism to provide relief for GCs seemed essential.\textsuperscript{282}

\textbf{D. Cyprus v. Turkey}

\textit{Cyprus v. Turkey}\textsuperscript{283} reaffirmed that the Republic was the sole legitimate government of Cyprus and that the TRNC was an illegal entity, albeit a “\textit{de facto} authority.”\textsuperscript{284} As a result, the ECHR could hold Turkey responsible for ensuring that human rights were protected in northern Cyprus and could also attribute any rights violations committed by the TRNC to Turkey.\textsuperscript{285} In violation of

\begin{footnotes}
\textsuperscript{277} See id. at 80.
\textsuperscript{278} See Bates, supra note 131, at 97.
\textsuperscript{279} BARTLETT, supra note 2, at 123.
\textsuperscript{280} See COUFOUDAKIS, supra note 2, at 77, 80; see also id. at 20-21 (“Turkey could not continue to defy the European legal order and expect that its EU accession path would continue unhindered . . . Because Turkey sought accession talks with the EU, it was compelled to pay Titina Loizidou the compensation and penalties imposed by the European Court of Human Rights for the loss of use and enjoyment of her property.”).
\textsuperscript{281} See id. at 77.
\textsuperscript{282} See id. (asserting that as a result of \textit{Loizidou}, “the urgency felt by the occupation authorities to adopt a ‘law’ on domestic remedies” is understandable, especially given the financial cost of the decision and the fact that over fifty comparable cases were pending at the ECHR).
\textsuperscript{283} App. No. 25781/94 (2001), 35 EUR. CT. H.R. 30 [hereinafter Cyprus v. Turkey].
\textsuperscript{284} Id. §§ 61, 90.
\textsuperscript{285} See id. § 77.
\end{footnotes}
Article 13 of the Convention, the ECHR concluded that Turkey and the TRNC had still failed to provide an effective domestic remedy to GCs. Finding the Property Compensation Commission, a forerunner to the IPC, to be “futile or ineffective,” the ECHR determined that GCs were not required to apply to it before filing with the ECHR.

However, the Court indicated that “where . . . remedies exist to the advantage of individuals and offer them reasonable prospects of success in preventing violations of the Convention, use should be made of such remedies.” Regardless of the status of the TRNC, the Court found there was a “need to avoid in the territory of northern Cyprus the existence of a vacuum in the protection of the human rights guaranteed by the Convention.” Therefore, the exhaustion of remedies requirement would apply in the event Turkey or the TRNC developed an adequate and effective remedy. Rejecting the GCs’ claim that any remedy developed by the TRNC would be invalid, the Court emphasized that recognition of a remedy provided by the TRNC would not equate to a recognition of the legitimacy of the TRNC as a state. The Court explained that “international law recognises the legitimacy of legal arrangements and transactions in such a situation” and that the TRNC’s illegality would not prevent the Court from implementing the exhaustion requirement of the Convention.

Although the Court ultimately found multiple continuing violations of the Convention, 293 Cyprus v. Turkey made it clear

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286 See Convention, supra note 117, art. 13 (“Everyone whose rights and freedoms as set forth in [the] ... Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”).


288 See id. § 99.

289 Id. § 91.

290 Id.

291 See id. § 238.

292 See id. § 86.

293 See COUFOUDAKIS, supra note 2, at 65-66 (describing Turkey’s violations of: Article 9 due to its treatment of the enclaved; Article 10 due to censorship; Article 1 of Protocol No. 1 by failing to recognize rights of inheritance; Article 2 of Protocol No. 1 by denying children access to secondary school; Article 3 for discriminatory treatment; and Article 8 for violating right to private and family life and home); see also Bates, supra note 131, at 96 (noting that the court found fourteen violations of the Convention).
that as long as the TRNC instituted a remedy that would adequately redress violations of the Convention, the fact that it was created by the TRNC would not impede its viability.

E. Xenides-Arestis v. Turkey

In 1998, Myra Xenides-Arestis filed an application with the ECHR claiming that Turkey had interfered with her Article 8 rights regarding respect for her home and her rights under Article 1 of Protocol No. 1.294 Prior to the invasion, Xenides-Arestis and her family lived in Famagusta in northern Cyprus.295 In addition to her home, she owned several plots of land, some of which were rented to other parties.296 After the Turkish military forced her to leave northern Cyprus, she was unable to return.297 As to her Article 8 rights, Xenides-Arestis distinguished her case from Loizidou’s due to the fact that she actually lived in northern Cyprus and had her home there at the time of the invasion.298

Turkey claimed the GCs’ rejection of the Annan Plan in 2004 precluded Xenides-Arestis from alleging a continuing violation of her rights.299 The Court rejected this claim and reiterated that the inter-communal talks between GCs and TCs could not be utilized to justify a violation of the Convention.300 The Court also refuted Turkey’s assertion that “the award of compensation to individual applicants such as the present one would seriously hamper and prejudice negotiations for an overall political settlement, including [settlement of] the complex property issue.”301

295 See id. § 10.
296 See id.
297 See id. § 11.
298 See id. §§ 16-17.
299 See id. §§ 13, 27; see also Özersay & Gürel, supra note 8, at 278 (noting that Turkey claimed it lacked jurisdiction in northern Cyprus and that the Annan Plan and the international community had implicitly recognized the exclusive authority of the TRNC in northern Cyprus).
300 See Xenides-Arestis 2005, App. No. 46347/99 § 20; Özersay & Gürel, supra note 8, at 278 (describing Turkey’s argument that “in the present political situation, allowing a displaced person to have full freedom of access to his/her property would undermine the inter-communal talks” and providing compensation would undermine negotiations of a bicomunal settlement).
Turkey then challenged the ECHR’s jurisdiction by alleging that the TRNC had created a domestic remedy that Xenides-Arestis had failed to exhaust; as a result, Turkey alleged that the case should be inadmissible.\textsuperscript{302} Turkey was referring to the TRNC’s 2003 Law, the predecessor to the 2005 Law creating the IPC.\textsuperscript{303} However, the Court found that Turkey had failed to demonstrate that the remedy was satisfactory under the Convention or that it was sufficient to provide redress; therefore, it rejected Turkey’s objections to admissibility.\textsuperscript{304} In part, the Court’s finding stemmed from the failure of the remedy to provide for restitution of property in the event that it was feasible and the fact that not all violations of the Convention would be addressed.\textsuperscript{305}

Despite the ECHR’s finding that the remedy was inadequate, the Court indicated that it was receptive to the efforts of Turkey and the TRNC to create a domestic remedy and that they should attempt to develop a remedy sufficient under the Convention.\textsuperscript{306}

Under Article 46 of the Convention, the Court noted that:

High Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties... [and when] the Court finds a breach... the respondent State [has] a legal obligation not just to pay... just satisfaction under Article 41, but also to select... the measures to be adopted in their domestic legal order to put an end to the violation... and to redress so far as possible the effects.\textsuperscript{307}

The Court indicated that the remedy chosen by the respondent state must secure “genuinely effective redress for the Convention violations identified in the instant judgment... as well as in

\textsuperscript{302} See Özersay & Gürel, supra note 8, at 286.

\textsuperscript{303} See Xenides-Arestis 2005, App. No. 46347/99 § 12; see also Demopoulos, 50 EUR. CT. H.R. § 50.

\textsuperscript{304} See Özersay & Gürel, supra note 8, at 279.

\textsuperscript{305} See id. at 286; see also Demopoulos, 50 EUR. CT. H.R. § 73 (indicating that the 2003 Law failed to satisfy Article 35 because it did not provide for compensation for movable property, non-pecuniary damages, and restitution of property; in addition, it failed to address violations of Articles 8 or 14, and it permitted the appointment of committee members living on GC properties or land).


\textsuperscript{307} Id. § 39; see also Convention, supra note 157, art. 46.
respect of all similar applications pending before it." 308 Within three months of a judgment by the ECHR, the remedy should be available, and within six months, the redress should be given. 309 As 1,400 property cases brought by GCs were pending before the ECHR, 310 the ECHR stressed that Turkey needed to introduce a remedy that effectively protected rights safeguarded by the Convention for all applicants. 311

The court proceeded to find a continuing violation of Article 1 of Protocol No. 1 and of Article 8 due to the "complete denial of the right of Greek-Cypriot displaced persons to respect for their homes in northern Cyprus since 1974." 312 Echoing its decisions in Loizidou and Cyprus v. Turkey, the court found that Xenides-Arestis remained the legal owner of her property and that no compensation had been paid to displaced persons regarding the interference with their property rights. 313

After the ECHR considered the merits of the case, the TRNC attempted to rectify the shortcomings identified by the Court in the 2003 Law with the 2005 Law. 314 The following year, the just satisfaction portion of Xenides-Arestis was before the Court, providing the ECHR with its first opportunity to consider the 2005 Law. 315 Turkey claimed that since the 2005 Law’s enactment, nine of the sixty applications that had been brought to the IPC had been concluded, three of which awarded restitution. 316 As a result, Turkey believed that the IPC had been proven viable and that Xenides-Arestis should be forced to submit her claim to the IPC prior to appealing to the ECHR for just satisfaction. 317

Noting that her application was deemed admissible before the
2005 Law’s enactment, Xenides-Arestis claimed it was inappropriate at this stage in the proceedings to decide whether the IPC provided a proper domestic remedy.\textsuperscript{318} Furthermore, Xenides-Arestis argued that the 2005 Law was invalid.\textsuperscript{319} Under the 2005 Law, GCs were unable to retain title to their property once compensation was paid or property exchange occurred; Xenides-Arestis argued that this directly contradicted ECHR precedent allowing GCs to receive compensation yet remain the rightful owners of their property.\textsuperscript{320} The 2005 Law, therefore, set up a mechanism whereby “compensation was paid as if lawful expropriation had occurred.”\textsuperscript{321} She also alleged the new law failed to require Turkey to cease violations and to restore GCs’ right to enjoy and occupy their property and possessions.\textsuperscript{322} Pursuant to the 2005 Law, Xenides-Arestis believed that “the legality of the interference with . . . [her] property and home was unassailable before the ‘TRNC’ authorities.”\textsuperscript{323}

Under the 2005 Law, the TRNC would provide restitution in only a small minority of cases. Not only did the law itself severely restrict restitution, but when restitution was in fact ordered, it would occur only when there was a “comprehensive settlement of the Cyprus Problem,” making restitution dependent on political events “despite the fact that the Law was supposed to provide a legal remedy.”\textsuperscript{324} Xenides-Arestis herself would not be entitled to restitution under the 2005 Law given the location of her property.\textsuperscript{325} Although the 2005 Law provided for property exchange in certain cases, Xenides-Arestis attacked the TRNC’s authority to order exchange since doing so could potentially jeopardize the rights of TCs in their property in the Republic.\textsuperscript{326}

\textsuperscript{318} See id. §§ 10, 12, 18.
\textsuperscript{319} See id. § 19.
\textsuperscript{320} See id. §§ 19, 33.
\textsuperscript{322} See id. § 20.
\textsuperscript{323} Id. § 21.
\textsuperscript{324} Id. § 22 (internal quotations omitted).
\textsuperscript{325} See id. (noting that Xenides-Arestis’s home was located in a fenced-in area under direct Turkish military control and that a recent TRNC court judgment held that the area belonged to a Muslim religious trust rather than to GC refugees).
\textsuperscript{326} See id. § 23.
GCs seeking relief under the 2005 Law would also be limited in the amount of damages they could receive because, unlike the ECHR, the 2005 Law did not provide for the recovery of interest, costs or expenses.\(^\text{327}\)

The Republic emphasized the limited nature of claims an applicant could bring before the IPC and argued that "the criteria according to which compensation was to be awarded were unfairly and unduly limited and were not based on the principles set out by the Court in... Loizidou... nor on international valuation standards."\(^\text{328}\) Although the IPC was required to be constituted of individuals who did not personally benefit from the displacement of GCs, the Republic noted that some of the members of the IPC had close relatives living on GC property and in GC homes.\(^\text{329}\) The Republic also claimed the presence of foreign members in the IPC was inconsequential as a mere majority of two-thirds of the members was sufficient to pass on a decision.\(^\text{330}\)

In response, the Court stated that it "welcomes the steps taken by the Government [of Turkey] in an effort to provide redress for the violations of the applicant’s Convention rights" and the rights of other applicants.\(^\text{331}\) According to the ECHR, the IPC had "taken care of" the Court’s requirements regarding a domestic remedy as outlined in the preliminary objections to Xenides-Arestis and its judgment on the merits.\(^\text{332}\) However, the Court determined that Xenides-Arestis would not be required to apply to the IPC given the advanced state of her case and the fact that the Court had already rendered a decision on the merits.\(^\text{333}\)

In addressing what damages to award Xenides-Arestis, the Court acknowledged that there was "a considerable difference" between the amount claimed by the applicant and the amount offered by Turkey.\(^\text{334}\) Although the Court emphasized the uncertainties involved in valuing the claim, it ultimately awarded

\(^{328}\) Id. § 32.
\(^{329}\) See id. § 34.
\(^{330}\) See id.
\(^{331}\) Id. § 37.
\(^{332}\) Id.
\(^{334}\) See id. § 40.
Xenides-Arestis € 800,000 in pecuniary damages, € 50,000 in non-pecuniary damages, and € 35,000 in costs.\textsuperscript{335} Xenides-Arestis also retained the title to her property, and Turkey was ordered to provide compensation for her loss of use and enjoyment of the property.\textsuperscript{336}

\textit{F. Demades v. Turkey}

In 1999, the ECHR ruled that John Demades' application regarding property he owned in northern Cyprus was admissible.\textsuperscript{337} In addition to owning a plot of land on the sea front in Kyrenia, Demades owned a fully-furnished home that his family regularly used as a second home.\textsuperscript{338} Turkey challenged the admissibility of Demades' application, claiming that due to Demades' failure to apply to the IPC, he had not exhausted the available domestic remedies.\textsuperscript{339} The Court, however, found that as it had already ruled on the admissibility of the application, the government was estopped from objecting at this point in the proceedings.\textsuperscript{340}

In addressing Demades' claim that Turkey violated Article 8 of the Convention, the Court found that, although the home in northern Cyprus was not his primary residence, "it may not always be possible to draw precise distinctions, since a person may divide his time between two houses or form strong emotional ties with a second house, treating it as his home."\textsuperscript{341} As the Convention was meant to be "a living instrument to be interpreted in the light of societal changes and in line with present-day conditions," the Court found that in these circumstances, the house in Kyrenia was a home within the meaning of Article 8.\textsuperscript{342} Consequently, a continuing violation of Demades' Article 8 rights had occurred.

\textsuperscript{335} See \textit{id.} §§ 42, 47, 54.

\textsuperscript{336} See \textit{COUFOUDAKIS, supra} note 2, at 78.


\textsuperscript{338} See \textit{id} § 11.

\textsuperscript{339} See \textit{id} § 15.

\textsuperscript{340} See \textit{id.} §§ 16, 20.

\textsuperscript{341} \textit{Id.} § 32.

\textsuperscript{342} \textit{Id.} § 33.
because he was denied "the right . . . to respect for his home." Because Turkey prevented the applicant from accessing, using, or enjoying his property, the Court also found a continuing violation of Article 1 of Protocol No. 1. Demades was ultimately awarded €785,000 for pecuniary damages, €45,000 for non-pecuniary damages, and €5,000 for his costs and expenses. In addition, he was allowed to retain title to the property. Demades reaffirmed the ECHR's decision in Xenides-Arestis that applicants whose cases had been deemed admissible prior to the 2005 Law's enactment would not be held to have failed to exhaust the domestic remedies available to GCs in the event that they did not apply to the IPC.

G. Alexandrou v. Turkey and Settlement with the IPC

The ECHR declared Andromachi Alexandrou's application admissible in 1999. Although Alexandrou owned land in northern Cyprus and possessed copies of the title deeds, she had been unable to access her property since 1974.

Denying its responsibility for Alexandrou's alleged injuries, Turkey argued that Alexandrou's failure to apply to the IPC rendered her case inadmissible because she had not exhausted available domestic remedies. According to Turkey, the IPC had jurisdiction to award compensation for GC property in northern Cyprus based on its market value in 1974 and could additionally provide payment for loss of use, loss of income, and the increase

344 See id. § 46.
346 COUFOUDAKIS, supra note 2, at 78.
349 See id. §§ 8-9.
350 See id. §§ 11-12 (explaining Turkey's claims that it lacked jurisdiction over the TRNC, and that since Alexandrou's property was expropriated before Turkey recognized ECHR jurisdiction in 1990, it could not be held responsible for any purported violations).
351 See id. § 13.
in property value since that date.\textsuperscript{352}

Alexandrou claimed the TRNC Law "aimed at providing a false and illusory domestic remedy in order to avoid the property claims of Greek Cypriots being adjudicated by the European Court of Human Rights" and that given the stage of the proceedings and the fact the IPC did not exist when her application was lodged, it was an insufficient remedy.\textsuperscript{353} She further alleged the remedy was discriminatory and incorrectly based on the notion that expropriation of GC property by the TRNC was lawful.\textsuperscript{354} In response to Turkey's claim that she was no longer a victim due to the availability of a remedy, she asserted that the remedy did not recognize that the Convention had been violated and as a result, she retained victim status.\textsuperscript{355} The Republic intervened in Alexandrou's case to emphasize that the 2005 Law did not provide redress for Article 8 violations or other violations of the right to property and that it was "incompatible with Articles 6, 13 and 14 of the Convention and Article 1 of Protocol No. 1."\textsuperscript{356}

The ECHR agreed with Alexandrou, finding that as the case had already been deemed admissible, objections to the Court's jurisdiction could not be raised at this stage.\textsuperscript{357} In response to Turkey's claim that Alexandrou had failed to produce evidence of her property ownership, the Court noted that the documents she submitted were prima facie evidence that she possessed title and that the burden was on Turkey to produce evidence to the contrary.\textsuperscript{358}

The Court ultimately found a continuing violation of Article 1 of Protocol No. \textsuperscript{359} and reserved the issue of damages for a later

\textsuperscript{352} See id. § 14.
\textsuperscript{353} Id. § 15.
\textsuperscript{354} Alexandrou Merits, App. 41355/98 § 15.
\textsuperscript{355} Id.
\textsuperscript{356} Id. § 17.
\textsuperscript{357} See id. § 21.
\textsuperscript{358} See id. § 30; see also Gavriel v. Turkey, App. No. 41355/98, EUR. CT. H.R. §§ 12, 17, 20, 25-26 (2009) (rejecting Turkey's claim that the applicant did not have title as a result of Article 159 of the TRNC Constitution and instead finding that the certificate of ownership issued to the applicant by the Republic was prima facie evidence of the applicant's ownership in 1974, as the TRNC authorities possessed records relating to title and were thus obligated to produce them in order to rebut the applicant's evidence).
\textsuperscript{359} See Alexandrou Merits, App. 41355/98 § 34.
date.\textsuperscript{360} The ECHR’s Turkish judge, Judge Karakaş, dissented from the opinion and argued that the exhaustion question should not have been rejected by the Court, as well as that there was no violation of Article 1 of Protocol 1.\textsuperscript{361} Karakaş noted that the:

rule of exhaustion of domestic remedies is intended to give Contracting States the opportunity to prevent or provide redress for violations alleged against them before such allegations are referred to the Court. That reflects the subsidiary nature of the Convention system.

Faced with the scale of the problem of deprivations of title to property alleged by Greek Cypriots (approximately 1,400 applications of this type lodged against Turkey), the Court, in... its \textit{Xenides-Arestis v. Turkey} judgment of 22 December 2005, required the respondent State to provide a remedy guaranteeing the effective protection of the rights set forth in Article 8 of the Convention and Article 1 of Protocol No. 1 in the context of all the similar cases pending before it. The State has a legal obligation not just to pay those concerned the sums awarded... but also to select the general or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. The Government submitted that by enacting the Law on Compensation for Immovable Properties... and setting up a Commission... it had discharged that obligation.\textsuperscript{362}

Karakas further claimed that although typically whether domestic remedies have been exhausted is considered at the admissibility stage, there are exceptional circumstances that justify deviation from the general rule.\textsuperscript{363} Under Article 35 of the Convention, the ECHR can reject an inadmissible application at any stage despite a prior finding of admissibility.\textsuperscript{364} According to Karakaş, the TRNC Law is “based on the guiding principles laid down by the Court in the \textit{Xenides-Arestis} case” and may be able to provide redress for

\textsuperscript{360} Id. §§ 54, 57.
\textsuperscript{361} See id. at app. (Karakşaş, J., dissenting).
\textsuperscript{362} Id.
\textsuperscript{363} See id.
\textsuperscript{364} See id.
violations of the Convention in cases such as the one before the Court.\textsuperscript{365}

Following the Court's judgment on the merits in \textit{Alexandrou}, the ECHR was informed that a "friendly settlement" had been reached between the TRNC and Alexandrou and that Alexandrou no longer wished for the Court to consider her claims for just satisfaction.\textsuperscript{366} In November 2008, Alexandrou had filed an application with the IPC requesting ten million Euros for loss of use of the land.\textsuperscript{367} The IPC ordered restitution of one of her properties and authorized payment of £1.5 million to compensate her for the value of the properties and for loss of use.\textsuperscript{368} Alexandrou requested that the Court strike the case so that payment would become effective and informed the Court that she considered the case settled and was content with the remedy provided by the IPC.\textsuperscript{369} The Court stated that "[i]t is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols"\textsuperscript{370} and struck the remainder of the case.\textsuperscript{371} Therefore, although the ECHR found a violation of the Convention and was willing to consider the just satisfaction portion of Alexandrou's case, the applicant's resort to the IPC resulted in the case's dismissal.\textsuperscript{372}

\textbf{H. Demopoulos and Others v. Turkey}

Prior to \textit{Demopoulos}, the ECHR had spoken somewhat favorably about the IPC; however, it had not analyzed the IPC or considered whether it constituted an adequate and effective domestic remedy.\textsuperscript{373} In \textit{Demopoulos}, the Court had its first

\textsuperscript{365} \textit{Alexandrou Merits}, App. 41355/98 app. (Karakas, J., dissenting).

\textsuperscript{366} \textit{See id.} § 7.

\textsuperscript{367} \textit{See id.} § 10.

\textsuperscript{368} \textit{See id.} § 13.

\textsuperscript{369} \textit{See id.}

\textsuperscript{370} \textit{Id.} § 17.

\textsuperscript{371} \textit{Alexandrou Merits}, App. 41355/98 § 18.

\textsuperscript{372} \textit{See id.} §§ 6, 18; \textit{see also} Eugenia Michaelidou Devs. Ltd. and Michael Tymvios v. Turkey, \textit{Eur. Ct. H.R.}, App. No. 16163/90, § 6, 13, 15, 17 (2008) (striking the case, despite the finding of a violation of Article 1 of Protocol No. 1, after the applicant accepted compensation and property exchange from the IPC thereby satisfying the Court's need for an equitable settlement).

\textsuperscript{373} \textit{See Demopoulos}, 50 \textit{Eur. Ct. H.R.} § 82 (explaining that although the Court in
opportunity to review GC applications that had not been deemed admissible prior to the TRNC’s creation of the IPC. Alleging violations of Article 8, Article 1 of Protocol No. 1, Article 14, and Article 13, the petitioners in Demopoulos consisted of several groups of GCs who had filed their applications with the Court between 1999 and 2004. As their cases had not yet been deemed admissible, Turkey argued that the IPC was an effective domestic remedy and that the applicants had to apply to it before appealing to the ECHR. According to Turkey, Article 35 of the Convention precluded GCs from using the ECHR as a court of first instance.

Without deciding the 2005 Law’s adequacy, the ECHR expressed approval of Turkey’s and the TRNC’s attempt to provide GCs with a domestic remedy in Xenides-Arestis; the Court even indicated that “the new compensation and restitution mechanism, in principle, has taken care of the requirements of the decision of the Court” requiring the creation of a remedy. As a result of the Court’s statements, Turkey and the TRNC believed that they had been given the green light regarding the IPC, although the ECHR had not yet ruled on whether it was satisfactory. By the time of Demopoulos, Turkey noted that the majority of applications to the IPC had been resolved by “friendly settlement,” and that no resort to the High Administrative Court had been necessary thus far.

The applicants in Demopoulos claimed that the exhaustion requirement should not apply to them as the IPC was created after they lodged their applications with the ECHR. In addition, since

Xenides-Arestis had determined that the IPC appeared adequate, there had not been in-depth analysis).

374 See id.
375 See id. §§ 41-43.
376 See id. § 64; see also id. § 68 (Article 35: “The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.”).
377 See id. § 64.
379 See Demopoulos, 50 EUR. CT. H.R. § 51.
380 See id. § 54.
381 See id. § 58.
the TRNC was an illegal entity, the applicants argued that it would be inequitable to force them to resolve their property claims with the IPC.\textsuperscript{382} Based on Turkey’s refusal to comply with previous ECHR judgments and the TRNC’s failure to repeal Article 159 of the TRNC Constitution, the GCs asserted that there had been an “absence of any genuine commitment to remedying the systemic defects.”\textsuperscript{383}

As to the IPC itself, the applicants attacked the independence of its members, the considerable exclusions that applied to restitution, and the IPC’s methods of calculating compensation.\textsuperscript{384} For example, they alleged the IPC had “a practice of radical under-compensation,” rarely granted restitution, applied “discriminatory” valuation procedures, and imposed “undue obstacles” due to its stringent requirements.\textsuperscript{385}

The Republic seconded the applicants’ concerns about the composition of the IPC because the TRNC President appointed its members, many of whom were likely to have relatives or acquaintances who benefited from occupation of GC properties.\textsuperscript{386} The Republic claimed that Turkey’s position regarding the alleged inadmissibility of the applications was “an attempt to legitimise their unlawful mass appropriation of Greek-Cypriot properties,” rather than an effort to remedy the violations of GC property rights.\textsuperscript{387} By failing to abide by ECHR judgments, including the judgment in Xenides-Arestis, Turkey “showed a continuing and deliberate flouting of such judgments.”\textsuperscript{388} Despite Turkey’s

\textsuperscript{382} See id.
\textsuperscript{383} See id.
\textsuperscript{384} See id. § 58-60.
\textsuperscript{385} Demopoulos, 50 EUR. CT. H.R. § 60.
\textsuperscript{386} See id. § 67.
\textsuperscript{387} Id. § 63; see also id. § 65 (reciting the Republic’s argument that the 2005 Law was void because it was created by a legislature that was unlawful and it was also based on the TRNC Constitution, which the ECHR has indicated to be invalid); id. § 67 (noting that the Republic was concerned that by accepting compensation as an appropriate remedy, it “would legitimise the compulsory acquisition of private property by an aggressor State in occupation of another state’s territory” and that “there was no means of establishing a breach of Convention rights”).
\textsuperscript{388} Id. § 63; see also id. § 80 (revealing that the applicants and the Republic claimed that Turkey should not be able to benefit from the IPC given its unjustified delay in complying with ECHR judgments).
noncompliance, the ECHR was allowing it to “impose on the people whose land it had occupied by force its own procedures for complaints about its violations of human rights.” 389 The Republic’s evidence indicated that a mere three to six percent of actual losses were being redressed by resort to the IPC. 390 According to the Republic, the IPC constitutes:

essentially a “bargaining” process in which vulnerable applicants were at a disadvantage, no reasons were given [for the decisions], there were serious linguistic barriers, delays, a lack of clarity as to which currency compensation was being paid in (whether Cypriot pounds or pounds sterling); an unjustifiable burden on applicants to prove no other persons claimed rights in the property or that there were no mortgage or charging orders on the property, as well as the inappropriate imposition of a criminal standard of proof beyond reasonable doubt and no provision for the payment of legal costs and expenses. 391

Turkey responded by claiming that the 2005 Law’s validity “was not affected by the fact it was created by [the] TRNC” 392 and that it remained an effective domestic remedy that applicants must exhaust before resorting to the ECHR. 393

Focusing on the supervisory nature of its role, the ECHR emphasized that the protections of the Convention are “subsidiary to the national systems safeguarding human rights” and that “it is not a court of first instance.” 394 Consequently, applicants must exhaust domestic remedies before the Court will entertain their complaints, as “[s]tates are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system.” 395

This is essential as the court:

does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large

389 Id. § 64.
390 Id. § 67.
391 Demopoulos, 50 EUR. CT. H.R. § 67.
392 Id. § 55.
393 See id. § 57.
394 See id. § 69.
395 Id.
numbers of cases which require the finding of basic facts or the calculation of monetary compensation—both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions. The exception to the exhaustion requirement is that an applicant is not required to exhaust remedies when they are "inadequate or ineffective" or when the remedies available are illusory. The ECHR has also noted that "the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case," including "the general legal and political context in which they operate as well as the personal circumstances of the applicants."

Ordinarily, the ECHR addresses whether an applicant has met the exhaustion requirement with reference to the remedies in effect as of the date of the application; however, the Court held that in this instance, an exception was merited. Despite the illegal occupation, the ECHR found that the TRNC's administrative, legal, and judicial acts were not necessarily deprived of their relevance under the Convention. The Court found that to hold otherwise would be unrealistic and also potentially harmful to inhabitants, as:

the key consideration is to avoid a vacuum which operates to the detriment of those who live under the occupation, or those who, living outside, may claim to have been victims of infringements of their rights. Pending resolution of the international dimensions of the situation, . . . it [is] of paramount importance that individuals continue to receive protection of their rights on the ground on a daily basis. The right of individual petition under the Convention is no substitute for a functioning judicial system and . . .

396 Id.
397 Demopoulos, 50 EUR. Ct. H.R. § 70 (explaining that an effective remedy must be accessible and capable of providing redress).
398 Id.
399 Id. § 87.
400 Id. § 88.
401 See id. §§ 93-94 (referencing the "Namibia Principle," which recognizes certain legal actions to be legitimate even if the administration taking those actions is not recognized).
enforcement of criminal and civil law. . . . The Court maintains its opinion that allowing the respondent State to correct wrongs imputable to it does not amount to an indirect legitimisation of a regime unlawful under international law.\textsuperscript{402}

The Court, therefore, found the applicants had to apply to the IPC before the ECHR could consider their claims because “[a]n appropriate domestic body, with access to the properties, registries and records, is clearly the more appropriate forum for deciding on complex matters of property ownership and valuation and assessing financial compensation.”\textsuperscript{403}

Unlike in previous ECHR cases, Turkey did not deny responsibility for the situation in northern Cyprus nor did it reject GCs’ claims that they were entitled to legal recourse.\textsuperscript{404} The Court noted the passage of time and its concern that:

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 . . . and it must be recognized that with the passage of time the holding of a title may be emptied of any practical consequences.\textsuperscript{405}

\textsuperscript{402} Id. § 96.

\textsuperscript{403} Demopoulos, 50 EUR. CT. H.R. § 97 (rejecting the claim that due to the “time, effort, and humiliation” that they would suffer in having to apply to the IPC “after years of continuing and flagrant violations,” the exhaustion requirement should not apply). The court also noted that “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.” Id. § 98.

\textsuperscript{404} Id. § 108.

\textsuperscript{405} Id. § 111; see id. § 113 (concluding that as the link between title and property possession becomes more attenuated, the redress necessary to satisfy Article 35 may change).
Although GCs desired restitution, the Court found that the payment of full and fair compensation would be sufficient to remedy the violation because "property is a material commodity which can be valued and compensated for in monetary terms."\textsuperscript{406} The ECHR ultimately found that even in Cyprus, member states were best able to choose how to remedy violations and that it should accord Turkey and the TRNC some deference in determining how to proceed as long as GCs were adequately compensated.\textsuperscript{407}

As to the composition of the IPC, the Court found that the GCs had failed to adequately call into question the integrity of its members.\textsuperscript{408} Although the ECHR acknowledged that Cypriot members of the IPC were likely to have been affected by the Cyprus Problem in some manner, the Court found that the GCs had not demonstrated unfairness.\textsuperscript{409} Even the fact that the TRNC President was charged with nominating the members did not cause the ECHR to find the IPC invalid.\textsuperscript{410} The Court also dismissed the applicants' claims that the IPC offered awards that were "unreasonably low,"\textsuperscript{411} mentioning that GCs often claimed awards based on high rates of interest and speculative assumptions.\textsuperscript{412}

Although conceding that GCs may experience difficulties in proving their property ownership, the ECHR found that the IPC's standard of proof as to property ownership was not unreasonable as there was no evidence that applying the standard had led to the rejection of a significant number of claims.\textsuperscript{413} Claims must be validated before relief is provided, and applicants to the ECHR would similarly have to provide evidence of ownership before the

\begin{footnotes}
\item[406] Id. § 115.
\item[407] See id. §§ 115, 118 (explaining that member states are better equipped "to assess the practicalities, priorities and conflicting interests on a domestic level").
\item[408] See id. § 120.
\item[409] Demopoulos, 50 EUR. CT. H.R. § 120.
\item[410] Id.
\item[411] Id. § 121.
\item[412] See id. § 122 (discrediting the claim that IPC awards inadequately compensated GCs for only two to six percent of actual losses since the requested GC damages often relied on calculations of claims that may not have been alleged, rates of interest that the Court had never previously accepted, and values that were "disproportionately high, given the speculative nature of the assumptions being made as to their profitability").
\item[413] See id. § 124.
\end{footnotes}
Court considered their application to be admissible.414 As a result, the court found that the 2005 Law provided an “accessible and effective framework of redress” and that it would reject GC applications alleging property violations where the applicant had not yet applied to the IPC.415

V. Possible Recourse to the European Court of Justice—

*Apostolides v. Orams*

Since GCs must now apply to the IPC before seeking review from the ECHR, GCs may increasingly attempt to utilize other forums to secure judgments against Turkey, TCs, the TRNC, and even foreign nationals occupying and purporting to own GC properties in northern Cyprus. A new development for GCs occurred in 2009 as a result of a case in the European Court of Justice (“ECJ”), *Apostolides v. Orams.*416 *Orams* confronts the Cyprus Problem from a slightly different angle than the ECHR cases: not only are GC homes and properties being claimed and inhabited by TCs and Turks, but there is also an increasing trend of foreign nationals “purchasing” GC properties.417

As a result of *Orams*, GCs who have secured judgments in the Republic may be able to have those judgments enforced by other EU member states.418 Thus foreign nationals who purchase and occupy property in northern Cyprus may be held accountable for their actions even if they are beyond the reach of the Cypriot court system.419 The litigation in *Orams* began after Meletis Apostolides brought suit in a Nicosia district court against a British couple, the Orams, in 2004.420 Apostolides owned land in northern Cyprus prior to the 1974 invasion.421 The Orams claimed that in 2002, they purchased the land in northern Cyprus in good faith from a third party who, in turn, had purchased the land from the TRNC.422

414 See id.
415 Demopoulos, 50 EUR. CT. H.R. § 127.
417 See COUFOUDAKIS, supra note 2, at 70, 73.
418 See id. at 79.
419 See id.
421 See id. § 18.
422 See id. § 19.
They proceeded to build a villa on the land, using it as a second home.\footnote{See id.} When the Orams failed to make a timely appearance in court, a default judgment was issued against them,\footnote{See id. §§ 21-26 (noting that Mrs. Orams was served with a document in Greek, a language she did not understand, and due to other complications, no one entered an appearance for the Orams by the necessary date).} requiring them to demolish their villa and to compensate Apostolides for rent and costs, in addition to delivering possession to Apostolides.\footnote{Id. § 26.}

Despite the default judgment, the Orams were able to appeal the decision; however, their appeal was ultimately dismissed after they failed to "put forward an arguable defence to dispute Apostolides’ title to the land."\footnote{Orams, 2009 E.C.R. I-03571 § 27.} To enforce the judgment against the Orams, Apostolides pursued execution through the English court system.\footnote{Id. § 29.} Pursuant to Regulation No. 44/2001, the Master of the High Court of Justice found the judgment enforceable in England.\footnote{See id.; see also COUFOUDAKIS, supra note 2, at 79 (indicating that under EU Regulation 44/2001, this judgment "could be enforced in any EU member state").} On appeal, a High Court judge set aside the order;\footnote{See COUFOUDAKIS, supra note 2, at 79 (describing the ruling of the High Court of Justice that there was no jurisdiction and that the case should be heard in the ECHR with Turkey serving as the defendant rather than the Orams).} subsequent proceedings were stayed pending the ECJ’s resolution of certain questions, including whether a member state could enforce a judgment rendered by a court in the Republic due to the fact that the Republic did not exercise effective control over northern Cyprus.\footnote{See Orams, 2009 E.C.R. I-03571 §§ 30-31.} The ECJ ultimately found that the judgment was enforceable.\footnote{See id. § 82; see also Judgment of the UK Court of Appeal (England and Wales) (Civil Division) in the Case of Meletios Apostolides v. David Charles Orams & Linda Elizabeth Orams January 19, 2010, PRNEWswire (Jan. 27, 2010), http://www.prnewswire.com/news-releases/judgment-of-the-uk-court-of-appeal-england-and-wales-civil-division-in-the-case-of-meletios-apostolides-v-david-charles-orams--linda-elizabeth-orams-january-19-2010-82802657.html [hereinafter UK Court of Appeal] ("In its judgment on April 27, 2009, the ECJ ruled that a judgment of a Court in the Republic of Cyprus must be recognized and enforced by all other EU Member States even if it concerns land situated in the Turkish occupied areas of Cyprus. The ECJ...")}
Following the ECJ's decision, the case proceeded to the United Kingdom Court of Appeal, which dismissed the Orams' claims, upholding the ECJ decision.\footnote{See UK Court of Appeal, \textit{supra} note 431.} The decision is final and binding on all EU member states.\footnote{Id.} As a result, the judgments of Cypriot courts regarding GC claims to property in northern "Cyprus can be registered and executed on the basis of European Union Regulation No. 44/2001 in the EU Member States where the usurpers of the properties reside."\footnote{Id.} Due to this decision, the right of GCs to their property has been reaffirmed, as has the principle that the laws of the Republic apply even in the occupied north.\footnote{Id.} Furthermore, the decision:

acknowledges that the Courts of the Republic of Cyprus have exclusive jurisdiction to decide on cases regarding immovable property in the Turkish occupied areas of Cyprus and that the British authorities, and by extension the authorities of EU Member States, have an obligation to acknowledge and implement those decisions in their respective countries. Greek Cypriot dispossessed owners now have the opportunity to defend their rights before the competent Courts of the Republic of Cyprus and then use European Union Regulation No 44/2001 to seek execution of the Cypriot Court judgments related to property in the occupied areas in EU Member States.\footnote{Id.}

Although the \textit{Orams} decision has a limited scope, it offers a
promising possibility for GCs seeking relief against EU nationals who have purchased their property in northern Cyprus. Because of Orams, GCs may be able to avoid application to the IPC, and foreign nationals may be deterred from buying and using GC-owned property in northern Cyprus.

VI. Conclusion

For GCs, the Demopoulos decision ends an era in which GCs could sidestep direct dealings with the TRNC and receive relief from Turkey’s 1974 invasion through the ECHR. GC applications deemed admissible prior to the 2005 Law’s enactment may remain under the ECHR’s jurisdiction; however, other GCs must now apply to the IPC before seeking review in the Court. GCs must exhaust all stages of process offered by the 2005 Law before the ECHR may consider their claims.437 Although this does not completely deprive GCs of ECHR review, GCs taking claims to the ECHR on appellate review will have the IPC’s decision to counter before the ECHR will grant them relief.

Moreover, this decision recognizes that the TRNC can create a legitimate domestic remedy recognized as valid by an important entity in the international community. The practical necessity of a domestic remedy was a driving force behind the Court’s decision to recognize the IPC; the Court felt that it could no longer continue to address each GC property claim as a court of first instance. The difficulties that the Committee faced in attempting to enforce the ECHR’s judgments were a drain on resources and a constant source of tension. As a result, GCs must now either resort to the IPC or await a political settlement of the Cyprus Problem before they are granted relief. In certain instances, however, GCs may be able to take advantage of the recent Orams decision to bypass both the IPC and the ECHR. As Orams will only be of use to GCs whose property is owned or occupied by citizens of other EU countries, however, Demopoulos is a huge blow to a significant portion of the GC community.

Beyond the psychological defeat experienced by GCs in Demopoulos, GCs will also have to deal with the practical effect of the Court’s decision. GCs must now submit claims to the TRNC’s IPC in order to seek relief, despite the fact that the

437 Id.
TRNC’s illegality is internationally recognized. In addition, the members of the IPC are overwhelmingly TC, and the presence of foreign members on the committee is insufficient to prevent a majority of TC members from voting as they please. GCs may also be unable to bring certain claims before the IPC, and accepting compensation requires them to relinquish title to their properties, something that was never required of them by the ECHR. Although appellate review is available, GCs will have to overcome problems of proof in order to prove ownership. Even GCs who ultimately receive restitution of their property will have to continue to wait until the resolution of the Cyprus Problem at a political level before they are able to possess and enjoy their property. Because of the severe limitations on restitution under the 2005 Law, only a small minority of GCs will be entitled to restitution, and most will have to accept compensation.

The effects of Demopoulos will permeate both the GC and TC communities. It will also have a substantial impact on Turkey, which will no longer play a primary role in providing relief to GCs who own property in northern Cyprus. Despite Turkey’s continuous failure to satisfy the ECHR’s judgments in GC property cases, Turkey has been allowed to pass the torch to the IPC, which hopefully will have a better record of success in carrying through with its obligations to remedy violations of the Convention. Whether Turkey is allowed to become an EU member remains to be seen; however, the provision of relief to GCs, and ultimately the resolution of the Cyprus Problem, are important considerations that the EU will likely take into account in making its decision. Despite the ECHR’s assertions that recognition of the IPC is not equivalent to acceptance of the TRNC, the Demopoulos decision represents international sentiment that resolution of the Cyprus Problem is past due.