

# The European Court of Human Rights and the Cyprus Property Issue Charting a way forward

Rhodri C. Williams and Ayla Gürel



PAPER 1/2011

 **PRIO**  
Cyprus Centre



## About the authors

**Rhodri C. Williams** is a human rights lawyer and an internationally recognized expert on forced displacement and property restitution issues. He worked from 2000-2004 for the OSCE in Bosnia, coordinating legal policy and field monitoring of the post-war restitution process there. He currently works as a consultant and blogs on land, property and conflict issues at TerraNullius.

**Ayla Gürel** is a senior research consultant at the PRIO Cyprus Centre in Nicosia. A specialist on property-related questions within the context of the Cyprus problem, she has published several articles and a report on this topic. At present she is leading a research and information project about internal displacement in Cyprus and its consequences ([www.prio-cyprus-displacement.net](http://www.prio-cyprus-displacement.net)).

# THE EUROPEAN COURT OF HUMAN RIGHTS AND THE CYPRUS PROPERTY ISSUE: CHARTING A WAY FORWARD

Rhodri C. Williams and Ayla Gürel

**PCC Paper 1/2011**

## **Peace Research Institute Oslo (PRIO)**

Hausmanns gate 7

PO Box 9229 Oslo

NO-0134 OSLO, Norway

Tel. +47 22 54 77 00

Fax +47 22 54 77 01

Email: [info@prio.no](mailto:info@prio.no)

Web: [www.prio.no](http://www.prio.no)

PRIO encourages its researchers and research affiliates to publish their work in peer-reviewed journals and book series, as well as in PRIO's own Report, Paper and Policy Brief series. In editing these series, we undertake a basic quality control, but PRIO does not as such have any view on political issues. We encourage our researchers actively to take part in public debates and give them full freedom of opinion. The responsibility and honour for the hypotheses, theories, findings and views expressed in our publications thus rests with the authors themselves.

© Peace Research Institute Oslo (PRIO), 2011

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or utilized in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without permission in writing from the copyright holder(s).

ISBN 978-82-7288-393-4

**Production and Cover design:** Action Global Communications

# CONTENTS

*INTRODUCTION* .....1

*BACKGROUND*.....3

*REPORTING OR DISTORTING THE COURT’S MESSAGE?* .....7

*POLITICS OR LAW OF SUBSIDIARITY?*.....11

*WHERE DOES RESTITUTION STAND AS A REMEDY?* .....15

*IS ‘GLOBAL EXCHANGE’ A VIABLE PROPOSAL?*.....21

*CONCLUSION*.....25

---

## INTRODUCTION

Since about 1995, the European Court of Human Rights (ECtHR or the Court) has been a key point of reference in the UN- sponsored Cyprus negotiations. This is due to the Court's numerous decisions concerning Greek Cypriot property claims arising from the island's *de facto* division in 1974. Taken as a whole, the Court's judgments have served to establish parameters – in accordance with the European Convention on Human Rights (the Convention) – that should inform any viable resolution of the Cyprus property issue.

In Cyprus, the Court's decisions are frequently portrayed as rendering one side victorious against the other. This is due in large part to the fact that the legal arguments of both parties tend to remain linked to the perceived 'national interests' of the two Cypriot communities and the political objectives of the two sides' leaderships. The proceedings have thus become highly adversarial, with significant negative consequences for the Cyprus peace process. As a result, negotiation has frequently played a secondary role to adjudication, leaving little room for genuine compromise, and leading to a *de facto* abdication of control over the outcome of the process by the parties.

In fact, the Court cannot provide a comprehensive solution and its decisions are not meant to resolve the property issue. However, they do effectively define a set of objective legal norms that any solution would be expected to satisfy. The solution itself must consist of a set of compromises conciliating the long-held political objectives of both sides. The ostensibly agreed objective of the Cyprus negotiations is *reunification* on a *bizonal* basis. This phrase represents an effort to reconcile two competing visions of an appropriate solution to the island's division. While reunification is the primary concern for Greek Cypriots, bizonality is central to the Turkish Cypriot side. In the context of the property issue, these objectives translate into a 'right to full reinstatement' asserted by Greek Cypriots, and an appeal for 'regulation of the exercise of property rights' based on more restrictive criteria asserted by the Turkish Cypriots.

In this paper we argue that the decisions of the Court serve only to define the outer parameters within which the parties have a degree of political space to arrive at a mutually acceptable compromise. In seeking to contribute to a better appreciation of these parameters, we maintain that the Court's recent judgments do no more – and no less – than to exclude the more extreme aspects of the proposals that have been put forward by both sides.

## BACKGROUND

UN-sponsored inter-communal negotiations for a settlement of the Cyprus problem have been going on for decades. A key item on the agenda of these negotiations is the ‘property issue’ relating to the right of displaced persons to their homes and possessions left behind as a result of violent conflict.<sup>1</sup> In 1996, the ECtHR delivered its landmark decision in the case of *Loizidou v. Turkey*, which concerned a Greek Cypriot displaced person’s claims to her property.<sup>2</sup> Since then, ECtHR jurisprudence has played a pivotal role in the Cyprus negotiations. Through its rulings in the *Loizidou* case and in numerous subsequent applications brought against Turkey by Greek Cypriots as well as the (*de facto* Greek Cypriot-controlled) Republic of Cyprus (RoC), the Court has strongly influenced both the negotiating parties’ and UN mediators’ approaches to the property issue.

Until very recently, the ECtHR rulings have followed an established pattern:

- Greek Cypriots displaced from Turkish- and Turkish Cypriot-controlled northern Cyprus are recognized as the legal owners of properties they left behind.
- Turkey is held to be responsible for violations of the right to property as well as the right to respect for the home, arising from the arbitrary denial of access to such property.<sup>3</sup>
- Because neither the Turkish nor the Turkish Cypriot authorities had established a credible remedy for these violations, compensation has been ordered by the Court in favour of affected individual applicants for *loss of use* of their property.

In the context of the Cyprus talks, these decisions of the Court – which, in this study, we call ‘the *Loizidou* line of decisions’ – have been seen by many as supporting Greek Cypriot demands, namely that all displaced persons on both sides be granted the right to return

<sup>1</sup> During the period 1963-74 the displaced were mostly Turkish Cypriots, estimated by the UN at around 25,000. After the 1974 war, which led to the present *de facto* division of Cyprus into a Turkish Cypriot-controlled north and a Greek Cypriot-controlled south, close to 30 per cent of the island’s population ended up being displaced: around 160,000 Greek Cypriots from the north to the south and approximately 55,000 Turkish Cypriots from the south to the north (See Ayla Gürel and Kudret Özersay, *The Politics of Property in Cyprus*, PRIO Report 3/2006 [2006], pp. 3-4). There have been many rounds of Cyprus negotiations under the auspices of the UN since 1968. During the present round, which started in April 2008, talks have focused on six key issues: governance and power sharing; economy; EU matters; property; territory; security and guarantees. A seventh heading, citizenship, aliens, immigration and asylum, has also been discussed by the Greek and Turkish Cypriot leaders.

<sup>2</sup> ECtHR, *Loizidou v. Turkey* (Merits), App. No. 40/1993/435/514 (1996).

<sup>3</sup> Under the European Convention of Human Rights, the right to property and the right to respect for the home are protected under Article 1 of Protocol 1 to the Convention (protection of property) and Article 8 of the Convention (right to respect for privacy, including in the home), respectively.

and to have their properties reinstated.<sup>4</sup> It is beyond doubt, however, that the Court's *Loizidou* line of decisions rule out the more extreme proposals of the Turkish Cypriot side. These involve a 'global exchange' of property that would preclude return and effect a form of 'bizonality' premised on a physical separation of the Greek and Turkish communities in Cyprus.

In *Loizidou* the Court ruled that the Turkish Republic of Northern Cyprus (TRNC) cannot legally take over Greek Cypriot property as this self-declared state lacks international recognition.<sup>5</sup> Thus, the applicants remain the legal owners and the refusal of the TRNC to allow them the free use of their property constitutes a 'continuing violation' of the Convention by Turkey, the respondent state in the case.<sup>6</sup> This ruling was highly significant because it allowed the Court to assume jurisdiction over the complaint, dismissing Turkey's contention that Greek Cypriots' rights to their property in the TRNC were definitively cancelled by the adoption of the TRNC Constitution of 7 May 1985, five years before Turkey submitted itself to the Court's jurisdiction.<sup>7</sup>

This finding contrasts with the Court's more typical approach to property complaints in 'transitional justice' cases where the alleged violations have occurred prior to the *full* entry into force of the Convention (including, in particular, acceptance of Court's jurisdiction) in the country concerned.<sup>8</sup> For instance, the Court has ruled that it has no jurisdiction over claims arising from Cold War era property nationalizations, regarding such nationalizations as 'instantaneous' acts that took place entirely before the local entry into force of the Convention, rather than 'continuing violations' that extended into this period.

In the *Loizidou* decision, the applicant was considered to be an owner suffering from 'continuing violations' related to the *use* of her property. Similarly, the claims put forward by Greek Cypriots in subsequent lawsuits have focused on the *denial of access* to their property by the Turkish authorities. Consequently, the remedies that were ordered by the Court focused on compensation for loss of use of property *only*, and *not* on remedies for loss of its actual ownership. In other words, the Court was never required to rule squarely on whether the Convention actually supported the maximalist Greek Cypriot position, namely that all displaced owners must be accorded the right to return and repossess their properties.<sup>9</sup>

<sup>4</sup> This interpretation has been contested. See Gürel and Özersay, *The Politics of Property in Cyprus*, 25-27.

<sup>5</sup> On 15 November 1983, Turkish Cypriots declared independence and established the TRNC through a proclamation subsequently approved by the parliament of the 'Cyprus Turkish Federated State', an interim *de facto* entity founded by Turkish Cypriots in February 1975. The UN Security Council rejected the founding of the TRNC as 'legally invalid' (Resolution 541, 18 November 1983), and no country other than Turkey has since recognized it.

<sup>6</sup> ECtHR, *Loizidou* (Merits), paras. 44-46.

<sup>7</sup> *Ibid.*, para. 35. Although Turkey ratified the Convention in 1954, it first recognized the compulsory jurisdiction of the ECtHR in a declaration of 22 January 1990, which explicitly applied only to alleged violations that occurred subsequent to this date. Thus, the Court's jurisdiction could only extend to the applicant's allegation based on the Court's finding of a 'continuing violation' of her property rights after 22 January 1990 (*ibid.*, para. 32). The RoC ratified the Convention in 1962 and recognized the jurisdiction of the ECtHR in 1980. The TRNC, not being internationally recognized, formally is not part of the Convention system.

<sup>8</sup> Tom Allen, 'Restitution and Transitional Justice in the European Court of Human Rights', *Columbia Journal of European Law*, Vol. 3 (2006).

<sup>9</sup> On this Greek Cypriot view, monetary compensation for the value of abandoned property would be acceptable only as the claimant's express preference or as a substitute remedy in cases where physical restitution of the claimed property was materially impossible (for instance, due to its destruction).



Thus, the widespread belief that the Court would eventually force a resolution of the property issue in favour of the Greek Cypriot side, regardless of the political negotiations, is built on the assumption that the Court's approach to 'loss of use' cases from *Loizidou* onwards would eventually result in obligatory restitution.<sup>10</sup> Since then, the Court has in fact broken with this expectation. This process began in 2005, when the Court applied its new 'pilot judgment procedure' for repetitive cases in the case of *Xenides-Arestis v. Turkey*,<sup>11</sup> and culminated in its March 2010 decision in *Demopoulos and Others v. Turkey*.<sup>12</sup> In *Xenides-Arestis*, the Court ordered Turkey to introduce a generally applicable remedy 'which secures genuinely effective redress ... in relation to the present application as well as in respect of all similar applications pending before [the Court]'.<sup>13</sup>

The Court's judgement in *Xenides-Arestis* set out specific guidelines for the reform of an earlier Turkish Cypriot property compensation mechanism.<sup>14</sup> This resulted in the TRNC's establishment of the Immovable Property Commission (IPC), mandated to provide remedies (including restitution in a limited category of cases) to dispossessed Greek Cypriot property owners.<sup>15</sup> In 2010, the *Demopoulos* decision stated that the IPC met the standards set out in *Xenides-Arestis* and constituted an effective remedy. With the *Xenides-Arestis* and *Demopoulos* decisions the Court established a new set of ground rules, altering the prospects of all future Greek Cypriot property litigation against Turkey:

- First, the Court ruled that the IPC constitutes an effective domestic remedy.<sup>16</sup> As a result, in accordance with the Court's admissibility rule requiring applicants first to exhaust all available domestic remedies, Greek Cypriot complaints regarding violations of the right to property under Article 1 of the first Protocol to the Convention will no longer be heard by the Court unless the claimant has first sought redress through the IPC.<sup>17</sup>
- Second, the Court has indicated that the sums of compensation provided in most cases so far by the IPC are adequate in terms of constituting effective redress for violations of the right to property.<sup>18</sup>

<sup>10</sup> Confidence in the Strasbourg Court to force full restitution was implicit in the April 2004 speech by the then-President of the Republic of Cyprus, Tassos Papadopoulos. This speech was widely credited with resulting in Greek Cypriot rejection of the UN-backed 'Annan Plan' for the unification of Cyprus.

<sup>11</sup> ECtHR, *Xenides-Arestis v. Turkey*, App. No. 46347/99.

<sup>12</sup> ECtHR, *Demopoulos v. Turkey and seven other cases* (Admissibility), App. Nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04 (2010).

<sup>13</sup> ECtHR, *Xenides-Arestis* (Merits, 2005), para. 40.

<sup>14</sup> ECtHR, *Xenides-Arestis* (Admissibility, 2005), 44-45.

<sup>15</sup> TRNC, Law 67/2005 (22 December 2005).

<sup>16</sup> ECtHR, *Demopoulos*, para. 127.

<sup>17</sup> *Ibid.*, para. 128.

<sup>18</sup> *Ibid.*, paras. 121-123. Compensation for loss of use awarded by the Court in another case deemed 'admissible' prior to *Demopoulos* was quite close to the sum that would have been offered for the same purpose by the IPC (*Loizou and Others v. Turkey* [Just satisfaction, 2011], App. no. 16682/90, para. 41). See also, International Crisis Group (ICG), *Bridging the Property Divide*, ICG Europe Report No. 210 (09 December 2010), 12.

- Third, the Court has ruled that remedies provided by the IPC are broad enough to address complaints related to interference with the right to respect for the home under Article 8 of the Convention, as well as the right to property under Article 1 of Protocol 1. It has also indicated that the passage of time has significantly eroded the links between claimants and their properties, and that the current occupants of such properties may in fact have acquired greater claims than their owners to protection under Article 8 of the Convention.<sup>19</sup>
- Finally, the Court has indicated that although restitution remains an indispensable component of remedies for large-scale property violations, governments enjoy discretion to identify cases in which restitution is deemed impossible and offer alternative remedies such as financial compensation or exchange of properties.<sup>20</sup> In doing so, it explicitly rejected the Greek Cypriot position that remedies other than restitution should be limited to circumstances of 'material impossibility'.<sup>21</sup>

---

<sup>19</sup> ECtHR, *Demopoulos*, paras. 133 and 136-137.

<sup>20</sup> *Ibid.*, paras. 114-118. See also, Rhodri C. Williams, 'Introductory Note – European Court of Human Rights: *Demopoulos v. Turkey*', *International Legal Materials* 3/2010 (Oct. 2010), accessible at <http://terra0nullius.wordpress.com/2010/10/20/note-on-ecthr-decision-in-demopoulos-v-turkey/>.

<sup>21</sup> *Ibid.*, para. 116.

## REPORTING OR DISTORTING THE COURT'S MESSAGE?

From the earliest days of the Strasbourg Court's involvement in the Cypriot property dispute, the significance of its decisions have tended to be overstated by the party most favourably affected by them and downplayed by the party to whom its decisions were adverse.<sup>22</sup> In some cases, Strasbourg's rulings have been portrayed as an impartial and 'legal' endorsement of the favourably affected party's entire negotiating platform, when in fact such decisions may only touch on much narrower questions of human rights interpretation.<sup>23</sup> Similarly, the party adversely affected by the Court's decisions has tended to dismiss them as politically motivated, typically with reference to factors largely extraneous to the Court's reasoning such as political agendas of powerful EU member states. The reactions to the recent *Demopoulos* decision and subsequent relevant rulings indicate that such attitudes may have, if anything, become even more entrenched.

On the Greek Cypriot side, the RoC government described the *Demopoulos* decision as 'wrong' and 'negative', and questioned how the Court could 'refer Greek Cypriots to an illegal commission which is founded on Turkey's unlawful acts'.<sup>24</sup> Greek Cypriot Attorney-General Petros Clerides told reporters: 'The decision, in my opinion, has a clear political feel that is incompatible with what we are used to from the Court'.<sup>25</sup> More recently, the Greek Cypriot Archbishop, Chrysostomos, reacted to the Court's rejection of a case involving religious property by stating that 'the Court looks more like a political court than a court that dispenses justice'.<sup>26</sup>

By contrast, Turkish and Turkish Cypriot commentators have generally expressed satisfaction with *Demopoulos*. In a written statement, the Turkish Ministry of Foreign Affairs alleged that the judgment 'means the recognition of compatibility with international law of the acts of the relevant TRNC authorities and their conformity with European standards'.<sup>27</sup>

---

<sup>22</sup> Kudret Özersay and Ayla Gürel, 'Property and Human Rights in Cyprus: The European Court of Human Rights as a Platform of Political Struggle', *Middle Eastern Studies*, Vol. 44, No. 2 (March 2008).

<sup>23</sup> Gürel and Özersay, *The Politics of Property in Cyprus*, 25-27.

<sup>24</sup> Reported at *Cyprus News Agency* ([www.cna.org.cy](http://www.cna.org.cy)) (6 March 2010).

<sup>25</sup> George Psyllides, 'Political motive to ECHR ruling', *Cyprus Mail* (9 March 2010).

<sup>26</sup> George Psyllides, 'Archbishop: ECHR dispenses politics not justice', *Cyprus Mail* (28 January 2011).

<sup>27</sup> 'Press Release Regarding the Confirmation of IPC's (Immovable Property Commission) Effectiveness with the Judgment of the ECtHR', Statement No: 52, Ministry of Foreign Affairs, Republic of Turkey (5 March 2010).

Similarly, a Turkish newspaper portrayed the ruling as significant because ‘for the first time a Turkish Cypriot commission has been recognized by Europe’s top human rights court, boosting the international legitimacy of the [TRNC]’.<sup>28</sup>

Such polarized portrayals of the Court’s decisions risk undermining the painstaking efforts of negotiators on both sides to arrive at solutions that conform to both the political demands of their respective constituencies and the legal parameters set by international and regional norms. It is also difficult to square such characterizations with the UN Security Council’s call for the two Cypriot leaders to prepare their respective publics in advance for the concessions that will undoubtedly be needed in order to achieve an eventual agreement.<sup>29</sup> Indeed, it remains unlikely that the terms of either a negotiated property settlement or a *de facto* one arrived at through political inaction and continuation of the current status quo could deviate significantly from the parameters laid down in the recent rulings of the Strasbourg Court.

Meanwhile, a good deal of confusion still remains regarding the relationship between the ECtHR’s *Demopoulos* decision and a prior ruling by the European Court of Justice (ECJ) in the case of *Apostolides v. Orams*. The latter decision opened the way for Greek Cypriots to seek enforcement of decisions by RoC courts against users of their property in northern Cyprus through the courts of any other member state in the European Union (EU).<sup>30</sup> However, in the wake of the *Demopoulos* decision, as well as the forthcoming accession by the EU to the Convention, it is safe to assume that future controversies before the ECJ that raise these issues will be adjudicated in a manner that takes into account the Strasbourg Court’s findings.<sup>31</sup> It also appears unlikely that such litigation possibilities will be widely pursued by Greek Cypriots, in part because of the expense involved.<sup>32</sup> In this light, public statements that either exaggerate or minimize the significance of the Strasbourg Court’s jurisprudence are likely to create unrealistic expectations of what both claimants and negotiators on either side can legitimately demand of the other.

It is now more crucial than ever that the negotiating sides seek to arrive at an objectively well-founded joint understanding of what the Strasbourg Court’s rulings signify for the resolution of the property issue, and to effectively communicate this information beyond the all too often closed world of the negotiating process. Efforts in this direction may not only

<sup>28</sup> ‘Ankara hopes Greek Cypriots learn from the IPC decision’, *Today’s Zaman* (8 March 2010).

<sup>29</sup> UN Security Council, Resolution 1953 (14 December 2010).

<sup>30</sup> *Apostolides v. Orams* (C-420-07), E.C.R. I-3571 (2009). For an analysis of this case see: Nikolaos Lavranos, ‘The ECJ and Cyprus: Keeping the Pandora Box Firmly Closed’ (August 24, 2009). Available at SSRN: <http://ssrn.com/abstract=1460639>.

<sup>31</sup> Nikos Skoutaris, ‘Building Transitional Justice Mechanisms without a Peace Settlement: A Critical Appraisal of Recent Case Law of the Strasbourg Court on the Cyprus Issue’, *European Law Review* (2010), 732. A few months after the ECJ handed down its ruling in the *Apostolides* case, the Lisbon Treaty entered into force (December 2009). Pursuant to Article 6(2) of the Treaty of the European Union: ‘The Union shall accede to the [Convention].’ The confusion emanating from the *Apostolides* ruling is likely to be resolved in light of this new provision, should a similar case arise in the future.

<sup>32</sup> ICG, ‘Bridging the Property Divide’, 10.

facilitate the ongoing negotiations but also contribute to the goal of informing the public of 'the progress made so far and the difficulties that still need to be resolved'.<sup>33</sup>

The facilitation of such an understanding is one of our key objectives in this paper. We argue that the decisions of the Court serve only to define the outer parameters within which the parties have a degree of political space to arrive at a mutually acceptable compromise. The *Demopoulos* decision does no more – and no less – than to exclude the more extreme aspects of the proposals that have been put forward by both sides. Specifically, the following conclusions can be derived from this decision:

- Physical restitution of all claimed property is not a requirement of the Convention. To implement such a demand would potentially result in new human rights violations. This factor must be taken into account in a freely negotiated political solution to the Cyprus conflict;<sup>34</sup>
- Exchange and compensation for loss of properties are forms of redress compatible with the requirements of the Convention. However a 'global exchange and compensation scheme' that excludes restitution will function as a domestic remedy for property claims only if it results from a freely negotiated political solution to the Cyprus conflict.<sup>35</sup>

Before exploring these conclusions, it may be helpful as a preliminary matter to address the argument that the 'pilot case procedure', which was implemented in the rulings culminating in *Demopoulos*, represents an undesirable politicization of the Strasbourg Court's jurisprudence.

---

<sup>33</sup> Report of the UN Secretary General on his mission of good offices in Cyprus (24 November 2010), para. 32.

<sup>34</sup> See ECtHR, *Demopoulos*, paras. 116-117.

<sup>35</sup> See *Ibid*, paras. 85 and 114-115.

## POLITICS OR LAW OF SUBSIDIARITY?

Accusations that the ECtHR decisions might be politically motivated have been a predictable response by parties in Cyprus – and many other settings – who feel that their side is adversely affected by its rulings. As discussed above, there is often a tendency to dismiss the Court’s decisions as either simply ‘wrong’ or as expressions of political partiality rather than accept them as unwelcome but binding legal injunctions. However, it is ironic that such stances have strengthened in response to the Court’s recent efforts to extract itself from involvement in categories of cases arguably requiring political negotiations rather than solutions imposed through international litigation.<sup>36</sup> Noting that one of the dissenting judges in the *Loizidou* decision warned against allowing the Court to be drawn into matters of an inherently political nature, contemporary observers have remarked that the *Demopoulos* ruling simply represents an attempt to return the property issue to the political sphere.<sup>37</sup>

The so-called pilot judgment procedure is a method adopted by the Court to deal with repetitive cases in situations where the underlying human rights problem could be resolved by the adoption of generally applicable measures – such as legal amendments – at the national level.<sup>38</sup> In pilot judgment cases, such as those culminating in *Demopoulos*, the Court finds a violation in a particular case, identifies the ‘dysfunction under national law’ that is at the root of the violation, and indicates to the responsible Government how the problem should be addressed in a manner that would constitute an effective domestic remedy.<sup>39</sup> Once the problem is resolved to the Court’s satisfaction, pending cases related to the same issue are struck out of the Court’s docket.

Views on whether it is appropriate for the Court to relinquish jurisdiction over classes of claims in this manner may ultimately depend on the extent to which such measures are

---

<sup>36</sup> Indeed, RoC President Christofias has stated that ‘the property issue, as well as the other aspects of the Cyprus problem, will be solved at the negotiating table’. In his view, the property issue is not only a legal issue but also a political one. See RoC Public Information Office, Press Release (10 March 2010).

<sup>37</sup> Alexia Solomou, ‘Demopoulos and Others v. Turkey’, *American Journal of International Law*, Vol. 104, No. 4 (October 2010). See also, Skoutaris, ‘Building Transitional Justice Mechanisms’, 727.

<sup>38</sup> Costas Paraskevas, ‘The Application of the “Pilot Judgment Procedure” to Post-Loizidou Cases’, *Annuaire Internationale Des Droits De L’Homme*, Vol. 4 (2009).

<sup>39</sup> Registrar of the European Court of Human Rights, ‘The Pilot-Judgment Procedure: Information Note Issued by the Registrar’ (2009).

seen as a purely expedient response to rising Court backlogs. Critics of the pilot judgment procedure have generally assumed that it is a purely defensive reaction by the Court to a caseload that has ballooned to unmanageable levels in recent years. On this basis, the Court has been accused of shirking its responsibility through an overhasty attempt to return to national authorities entire categories of cases over which it had previously assumed jurisdiction. However, proponents of this argument often fail to acknowledge that there is a legal as well as an administrative rationale to the pilot judgment procedure. In other words, even if there were no backlog issues, the fact would remain that the Court does not have a clear mandate to resolve repetitive cases individually where this responsibility rests with national authorities. Indeed, it could be argued that the Court's rulings express a principled attempt to uphold subsidiarity, i.e., the idea that decisions should be taken at a level as close to those persons directly affected as possible. Although capacity concerns may have hastened the Court's explicit adoption of a 'constitutional' justice model (whereby it provides guidance for resolving categories of cases rather than individually adjudicating each), it is not clear that any other model would be functionally appropriate.<sup>40</sup>

It would be a mistake to assume that, having ratified the Convention, the Council of Europe (CoE) member states should take compliance with the Court's decisions as their highest obligation in this sphere. Rather, the most important state obligation under the Convention is to prevent cases from reaching the Court in the first place by taking national-level measures to assure respect for human rights and by providing effective domestic remedies when these fail. This obligation is reflected in the very first article of the Convention (Obligation to respect human rights), which states that parties 'shall secure to everyone within their jurisdiction the rights and freedoms defined in ... this Convention'. The obligation to prevent cases from reaching the Strasbourg Court also underlies the right to an effective domestic remedy in Article 13 of the Convention (Right to an effective remedy), and its relationship to the requirement that claimants to the Court first exhaust the possibility of such remedies set out in Article 35 (Admissibility criteria). These rules are based on the principle that only the competent national authorities have the capacity, as well as the democratic legitimacy and the legal responsibility, to prevent and effectively address human rights violations. This principle is at the heart of the Court's doctrine of subsidiarity.

From this perspective, given a pattern of repetitive violations attributable to a single state, a new approach by the ECtHR would be justified even in the absence of a backlog in cases. By way of analogy, any situation at the national level, in which the court system

---

<sup>40</sup> Solomou, 'Demopoulos', 635.

was forced to deal, case by case, with a systemic problem without executive leadership or legislative guidance, would be seen as a failure of the latter branches of government to take their responsibility.

Application of the subsidiarity principle in Cyprus is admittedly complicated by the fact that a truly satisfactory domestic remedy for property violations – one that would not only meet the technical requirements for effectiveness but would also be politically legitimate – cannot result from the actions of a single national authority. Rather, it would have to arise from complex political negotiations involving numerous actors. This dynamic can be illustrated by comparing the Cyprus case with those handled by the Court in the first major test of the pilot judgment procedures, the ‘Bug River Cases’ from Poland. In concluding these cases, the Court found that the *Polish* Government had provided an effective domestic remedy through the amendment of *Polish* legislation in a manner that addressed the claims of affected *Polish* nationals.<sup>41</sup> By contrast, in *Demopoulos*, a state neighbouring Cyprus (Turkey) was found to have provided an effective domestic remedy through the legislative action of an unrecognized Cypriot entity (the TRNC). This remedy addressed the claims of persons living in a Cypriot state (the RoC) that was internationally recognized (except by Turkey and the TRNC) but did not enjoy effective control over the territory where the disputed property was located.

Thus, while the Court found that the Immovable Property Commission (IPC) in northern Cyprus met the technical criteria for providing an effective remedy, the diversity of actors involved indicates that the outcomes of IPC decision-making can never be as politically legitimate or as generally acceptable as a negotiated solution to the property issue.<sup>42</sup> Nevertheless, the Court’s decision cannot be dismissed as an abdication of responsibility. In a meaningful sense, the *Demopoulos* ruling might equally be defended as an attribution of responsibility in a situation where the parties jointly bound by their obligations under the Convention had failed to take systemic measures to ensure its respect, e.g., through a comprehensive solution of the Cyprus problem.<sup>43</sup>

Indeed, the responsibility of political actors to negotiate a settlement that addresses human rights violations in Cyprus has been a persistent theme in litigation on this issue in Strasbourg. In the first three inter-state applications by Cyprus against Turkey in the late 1970s, for instance, the Committee of Ministers of the CoE recommended that violations of

---

<sup>41</sup> Registrar of the European Court of Human Rights, ‘European Court closes pilot judgment procedures in Polish “rent control” cases, following introduction of compensation scheme’, *Press Release No. 284* (31 March 2011).

<sup>42</sup> See the *Demopoulos* decision, paragraphs 89 and 92-102, for the applicants’ and the RoC’s arguments, as well as the Court’s reasoning on the application of the requirement of exhaustion of domestic remedies.

<sup>43</sup> As stated by the Court in paragraph 85 of *Demopoulos*: ‘Thus, the Court finds itself faced with cases burdened with a political, historical and factual complexity flowing from a problem that should have been resolved by all parties assuming full responsibility for finding a solution on a political level.’



the Convention identified by the now-defunct European Commission on Human Rights be addressed through the resumption of negotiations. In the Commission's words, 'the enduring protection of human rights in Cyprus can only be brought about through the re-establishment of peace and confidence between the two communities; and ... intercommunal talks constitute the appropriate framework for reaching a resolution of the dispute'.<sup>44</sup> Over thirty years later, this rationale is clearly reflected in the *Demopoulos* court's conclusion that *ad hoc* remedial measures such as the IPC cannot substitute for the 'human rights dividend' that would result from a negotiated resolution of the conflict:

*Pending resolution of the international dimensions of the situation*, the Court considers it 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 framework for the enforcement of criminal and civil law.<sup>45</sup>

This obviously points to the need for a negotiated solution with which all parties will comply out of conviction that doing so is in their best interest. The necessity of involving all interested parties in negotiations to end the Cyprus conflict underscores the fact that such negotiations remain the only route to an 'appropriate framework for the effective protection of the fundamental rights and freedoms of all EU citizens in northern Cyprus'.<sup>46</sup>

---

<sup>44</sup> CoE, Resolution of the Committee of Ministers on the 1<sup>st</sup> (1974) and the 2<sup>nd</sup> (1975) inter-state cases *Cyprus v. Turkey* (1979).

<sup>45</sup> ECtHR, *Demopoulos*, para. 96 (emphasis added).

<sup>46</sup> Skoutaris, 'Building Transitional Justice Mechanisms', 11. This conclusion might as easily be applied to all interested parties throughout the territory of Cyprus.

## WHERE DOES RESTITUTION STAND AS A REMEDY?

**T**urning to the concrete implications of the Court's recent rulings, the *Demopoulos* case came as a shock to many Greek Cypriots, first of all, because it places significant limitations on the exercise of property rights by Greek Cypriots who own property in northern Cyprus. However there was also the more unexpected conclusion of the Court – which has received considerably less attention to date – which implies the existence of competing rights on the part of present occupants of such property, something that was not hinted at in earlier rulings.

On the issue of legal remedies for Greek Cypriot owners, the Court explicitly set aside the contention that Turkey has an obligation to physically restore all claimed properties (apart from instances in which restitution would be 'materially impossible' due to factors such as destruction).<sup>47</sup> Instead, the Court maintained that the authorities, in crafting the IPC law, were entitled to significant discretion in determining the circumstances under which compensation could be substituted for restitution. This ruling contradicts the widely held Greek Cypriot position that contemporary human rights law favours physical restitution and allows for its substitution with other legal remedies only where based on a restrictive 'material impossibility' standard.<sup>48</sup>

In fact, although the Court's *Demopoulos* judgment may be seen as representing a break with its earlier *Loizidou* line of decisions, it also arguably represents a harmonization of the Court's Cyprus rulings with its overall jurisprudence on rights associated with property and the home in situations involving post-conflict or political transitions. This becomes more evident when one looks at two broad jurisprudential trends in the Court's rulings from which the earlier Cyprus case-law deviated.

---

<sup>47</sup> ECtHR, *Demopoulos*, para. 116.

<sup>48</sup> This view was understandable in terms of post-Cold War restitution practice and international standards. Since the early 1990s, property restitution has been promoted as an element of peace-building and transitional justice in many post-conflict settings, perhaps most notably Bosnia. See, Rhodri C. Williams, 'The Contemporary Right to Property Restitution in the Context of Transitional Justice', *International Center for Transitional Justice Occasional Paper* (May 2007). International standards on property restitution such as the 2005 'Pinheiro Principles' have tended to posit strict limitations on the extent to which in-cash or in-kind compensation may be substituted for the physical restitution of claimed property.

The first pattern involves an observed tendency of the Court to avoid, where possible, taking a position on controversies that partially or completely pre-date the entry into force of the Convention and the recognition of the jurisdiction of the ECtHR by the country concerned.<sup>49</sup> In particular, the Court appears to have used its ‘admissibility’ rules (those governing whether it has jurisdiction over cases) to avoid taking decisions on property claims arising from ‘transitional’ settings even where such claims might be admissible in ordinary (non-transitional) circumstances.<sup>50</sup> This tendency has been most pronounced in cases related to the political transition from communism to democracy in Eastern Europe. In these cases, the Court has consistently declined to assume jurisdiction over claims to nationalized property based on a finding that Cold War era confiscations were ‘instantaneous’ acts completed prior to accession to the Convention, rather than ‘continuing violations’.<sup>51</sup>

This approach has also coloured the Court’s handling of more recent cases arising from conflict in the Western Balkans. For instance, in one case involving wartime confiscation of minority Serbs’ urban apartments in Croatia, the Court declined jurisdiction on the grounds that the confiscation had taken place ‘instantaneously’ prior to Croatia’s ratification of the Convention and its Protocols.<sup>52</sup> This reinforces the idea that the *Loizidou* line of decisions may have represented an inconsistency in an established pattern of ECtHR jurisprudence reflecting reluctance to play an arbitrating role in highly politicized ‘transitional’ property issues. According to this reading, *Demopoulos* represents a *de facto* harmonization of the Court’s Cyprus case-law with its decisions on other transitional property controversies.

A second point on which the case-law on Cyprus has, until recently, deviated from the Court’s broader jurisprudence concerns the relationship between the right to property under Article 1 of Protocol 1 and the right to respect for the home under Article 8 of the Convention. Specifically, when the owner of a property ceases to use it for their own residential purposes, the Court will uphold the owner’s property rights but will not recognize the property as the owner’s ‘home’ for the purposes of Article 8 of the Convention. Ordinarily, applicants alleging a violation of the right to the home must show that they live in the property or at least maintain ‘sufficient continuing links’ with it in order to trigger the protection of Article 8. However, in decisions related to Cyprus, the Court ruled that the involuntary absence of Greek Cypriots from their homes for periods of up to thirty years did not suffice to break this

---

<sup>49</sup> See, generally, Patrick Macklem, ‘Rybna 9, Praha 1: Restitution and Memory in International Human Rights Law’, *NYU Center for Human Rights and Global Justice Working Paper* No. 11 (2004).

<sup>50</sup> Tom Allen, ‘Restitution and Transitional Justice’.

<sup>51</sup> Tom Allen, ‘Transitional Justice and the Right to Property under the European Convention on Human Rights’, *Stellenbosch Law Review*, Vol. 16, No. 3 (2005).

<sup>52</sup> ECtHR, *Blecic v. Croatia* (Merits, 2006), App. N. 59532/00. One observer noted that the fact that Serbs were targeted for the confiscation of apartments gave rise to clear parallels with *Loizidou*, with the apparently conclusive difference being the fact that Croatia was a recognized state. See Allen, ‘Restitution and Transitional Justice’, 14-15.

bond, implying that wrongful evictions or denial of access do not immediately break the link between displaced applicants and their homes.<sup>53</sup>

In *Demopoulos*, by contrast, the Court ruled that the remedies provided by the IPC were 'broad enough to encompass aspects of any loss of enjoyment of home' alleged by displaced owners.<sup>54</sup> Tellingly, the Court also rejected one of the *Demopoulos* applicants' Article 8 claim to a property she did not own:

... the Court recalls that the second applicant was very young at the time she ceased to live in the then family home in 1974, which was some thirteen years before the Court's temporal jurisdiction commenced and some twenty-eight years before the date of introduction of her application. For almost her entire life, the applicant has been living with her family elsewhere. The fact that she might inherit a share in the title of that property in the future is a hypothetical and speculative element, not a concrete tie in existence at this moment in time.<sup>55</sup>

Property rights are typically given higher protection in human rights litigation when they align with the interests protected by other human rights.<sup>56</sup> In the European human rights system, this is perhaps most clearly the case with regard to the right to the home in connection with the right to property:

Considering the perspective of the person seeking eviction of people from a house he or she owns, one can first differentiate between those for whom the house is also their home and those for whom it is a mere possession. An example of the latter is a housing corporation. Such a corporation only has an interest under [Article One of the First Protocol to the Convention], whereas the former have an additional interest under Article 8.<sup>57</sup>

Conceptually, this differentiation may be at the crux of the shift in the Court's reasoning between the *Loizidou* line of decisions and *Demopoulos*. Despite its earlier rulings, the Court has recently evinced skepticism that the Cypriot displaced could still be seen as generally enjoying 'concrete and persistent links' with their former homes.<sup>58</sup> While the Court clearly affirms that Greek Cypriot title to abandoned homes remains protected by the

---

<sup>53</sup> Antoine Buyse, *Post Conflict Housing Restitution: The European Human Rights Perspective, with a Case Study on Bosnia and Herzegovina* (Intersentia, 2008), 37-38.

<sup>54</sup> ECtHR, *Demopoulos*, para. 133.

<sup>55</sup> *Ibid.*, para. 137.

<sup>56</sup> Buyse, *Post Conflict Housing Restitution*, 73-74.

<sup>57</sup> *Ibid.*, 81.

<sup>58</sup> ECtHR, *Petrakidou v. Turkey* (Merits and Just Satisfaction, 2010), App. No. 16081/90; and *Asproffas v. Turkey* (Merits and Just Satisfaction, 2010), App. No. 16079/90. See also, ICG, 'Bridging the Property Divide', 12-13.

Convention right to property, these claims are no longer reinforced by an automatic linkage to the protection of the home.<sup>59</sup> On the contrary, the Court's justification for rejecting a strict, restitution-based approach to remedying property violations implies that it is now the current occupants who enjoy the primary protection of Article 8 of the Convention:

It cannot be within the Court's task in interpreting and applying the Convention to impose an unconditional obligation to embark on the forcible eviction and rehousing of potentially large numbers of men, women and children even with the aim of vindicating the rights of victims of violations of the Convention.<sup>60</sup>

In many respects, the decision in *Demopoulos* represents an endorsement not only of the IPC but also of the approach to property remedies in the now-defunct Annan Plan for the reunification of Cyprus.<sup>61</sup> It is particularly noteworthy that the Court states that the Annan Plan 'provided for the property rights of the Greek Cypriots to be balanced against the *rights of those* now living in the homes or using the land'.<sup>62</sup> It does this before going on to approve the IPC rules, which strike a similar balance between restitution and compensation based in part on the status of persons now using claimed properties. This indicates that the Court's view of the property rights equation in Cyprus is more nuanced than that previously asserted by prominent Greek Cypriot political figures.<sup>63</sup>

In *Demopoulos*, the Court has clarified that while dispossessed Greek Cypriots are entitled to a remedy, both the passage of time and, significantly, the failure of the parties to the conflict to arrive at a political settlement cannot be ignored in the process of defining what form such redress should take – and particularly in deciding between restitution and compensation.<sup>64</sup> Reading between the lines, the Court has indicated that the specific effect of the passage of time has been (a) to erode the validity of Greek Cypriot claims that their abandoned property should still be seen as 'homes' protected by the Convention; and (b) to shift the latter protection instead to the current users of claimed properties. This appears to explain the view of the *Demopoulos* court that across the board restitution of such properties would risk creating 'disproportionate new wrongs' in the form of mass evictions of current users, justifying resort to compensation instead.<sup>65</sup>

---

<sup>59</sup> ECtHR, *Demopoulos*, para. 112.

<sup>60</sup> *Ibid.*, para. 116.

<sup>61</sup> The Annan Plan was accepted by a large majority of the Turkish Cypriot voters but overwhelmingly rejected by Greek Cypriot voters in the 2004 twin referenda. The Plan is accessible at <http://www.hri.org/docs/annan/>.

<sup>62</sup> ECtHR, *Demopoulos*, para. 10 (emphasis added).

<sup>63</sup> In an April 2004 speech, for instance, President Papadopoulos urged the Greek Cypriots to reject the 'Annan Plan' for the unification of Cyprus on grounds that '... there are questions of principles and human rights where the middle solution is not the right answer. The obvious and correct principle is not for the legal owners to share their property with the illegal invaders or to claim compensation for the deprivation of their property'. 'Declaration by the President of the Republic Mr. Tassos Papadopoulos regarding the referendum of 24<sup>th</sup> April 2004' (07 April 2004).

<sup>64</sup> ECtHR, *Demopoulos*, para. 85.

<sup>65</sup> *Ibid.*, para. 117.

The sum of the Court's jurisprudence indicates that time is not on the side of the Greek Cypriots. Since 2004, their property claims under the First Protocol to the Convention have been weakened by the fact that the Court now appears to view the right to the home under Article 8 as primarily protecting current users rather than owners. Moreover, the Court has made it clear that the only means of challenging the IPC framework is through presenting the Court with evidence that the IPC does not provide an effective remedy. This in turn implies that the Greek Cypriot authorities should reverse their current policy and encourage claimants to actively make use of this mechanism.<sup>66</sup>

On the other hand, the Court has left room for a politically negotiated solution that would provide for property restitution to a much greater extent than if all outstanding Greek Cypriot claims were eventually to be handled through the IPC mechanism. In discussing the balancing of rights foreseen in the Annan Plan, the Court referred not only to the criteria for deciding between restitution and compensation in areas that would remain in the Turkish Cypriot constituent state, but also to the principle that all properties would be restored to their dispossessed owners in the areas that had been identified for territorial adjustment in favour of the Greek Cypriot constituent state.<sup>67</sup> This implies, at a minimum, that the Court could give its approval to a policy of full restitution in areas subject to territorial adjustment in a new agreement, even if this implied the dislocation of large numbers of current users. Indeed, the interpretation most favourable to the Greek Cypriot side would be that the Court would view restricting restitution rights elsewhere as justified only on the condition that the areas subject to territorial adjustment in a future agreement were no less – in extent and value – than those negotiated in the Annan Plan. In either case, the implicit message is that Greek Cypriot property rights are best protected through a negotiated solution rather than continued litigation; the Court may be willing to countenance large-scale evictions (at least in areas subject to territorial adjustment) as part of a negotiated settlement, but appears unlikely to rule that the Convention demands such a solution.

---

<sup>66</sup> *Ibid.*, para. 128

<sup>67</sup> *Ibid.*, paras. 11-13.

## IS ‘GLOBAL EXCHANGE’ A VIABLE PROPOSAL?

The war in 1974 was quickly followed by a controversial but nearly complete transfer of populations, which rendered the two parts of the island in effect ethnically homogenized.<sup>68</sup> Since that time, the greatest possible reversal of this situation has been a key Greek Cypriot goal in the negotiations, pursued through demanding that *all* displaced persons, from both communities, be granted the right to return home and to full restitution of their property. In contrast, Turkish Cypriots have advocated ‘global exchange and compensation’ as a preferred solution for dealing with property-related claims of the displaced. This translates into a kind of ‘lump-sum agreement’ between the two Cypriot sides, entailing an exchange of all Turkish Cypriot properties in the south for all Greek Cypriot properties in the north, with compensation to be paid, if necessary, for any difference in the value of properties, taking into account the Turkish Cypriot losses incurred before 1974. This approach would effectively preclude return, as *no* displaced persons, from either side, would have their properties reinstated. The result would be a pure form of ‘bizonality,’ one premised on complete separation of the Greek and Turkish communities within their respective zones.<sup>69</sup>

The Turkish Cypriot outlook reflects past practice. After the events of 1974, the property left behind in northern Cyprus by Greek Cypriot displaced persons was taken over by the Turkish Cypriot authorities and allocated to the locally resident population based on a set of criteria. At a later stage of this process, in exchange for properties they had left behind in the south of the island, and upon relinquishing their title to such properties in favour of the TRNC, Turkish Cypriot displaced persons were granted ‘ownership’ of properties in the north that belonged to Greek Cypriots. This reallocation of property was envisioned by the Turkish Cypriot authorities as a form of unilateral global exchange. Compensation to dispossessed Greek Cypriot property owners was to be withheld pending acceptance of an exchange-based formula in the negotiations to end the Cyprus conflict.

<sup>68</sup> Gürel and Özersay, *The Politics of Property in Cyprus*, pp. 3-4.

<sup>69</sup> The Turkish Cypriot side has argued for the outcome of the post-1974 population transfers to be taken as the basis for a ‘bi-zonal’ Cyprus settlement since 1977. *Ibid.*, 18-19.

Settlement possibilities involving milder variations of this 'global exchange and compensation' scheme remained under consideration as late as 1992.<sup>70</sup> However, beginning in the mid-1990s, the ECtHR's *Loizidou* line of decisions progressively reduced the chances of acceptance of this extreme position until it was abandoned in 2004. The Court's recognition of the displaced Greek Cypriots' continuing rights to properties ostensibly confiscated by the Turkish Cypriot authorities rendered proposals based on global exchange entirely unacceptable from the Greek Cypriot point of view.

The Annan Plan of 2004 represented a compromise formula that was meant to resolve the property issue in a manner consonant with the principle of bizonality, on the one hand, and respect for the individual rights of displaced owners and current users, on the other.<sup>71</sup> Turkish Cypriot endorsement of the Annan Plan in the 2004 referendum may have been based on concern that the failure to achieve an overall solution would result in the ECtHR ordering the opposite of global exchange in the form of a reinstatement of the property situation as it was before 1974. Seen in this light, the Annan Plan's provisions providing for limited restitution of property in areas not subject to territorial adjustment and full compensation for property that was not reinstated, and placing ceilings on the physical return of displaced persons, represented a more desirable alternative.

As the Court applied its pilot judgment proceedings in *Xenides-Arestis* and *Demopoulos*, it strongly indicated that the essential elements of the Annan Plan property regime were compatible with the Convention.<sup>72</sup> In *Demopoulos* the Court ruled that the Turkish Cypriot IPC provided 'an accessible and effective framework of redress'.<sup>73</sup> In its rules of decision, the IPC proceeds largely from the same premises as the Annan Plan property provisions: reinstatement of property to dispossessed owners is accorded under limited circumstances, otherwise compensation or exchange for comparably valued Turkish Cypriot property in the south is considered the norm.<sup>74</sup> Crucially, at an earlier phase of the pilot judgment procedure, the Court had rejected a previous Turkish Cypriot scheme for dealing with displaced Greek Cypriots' property claims on the basis that it was not a 'complete system of redress'. There, the Court had argued that the 'terms of compensation' offered in the scheme did 'not allow for the possibility of restitution of the property withheld'. Ensuring 'the possibility of restitution' in at least some cases was accordingly one of the prerequisites laid down by the Court for the establishment of an effective system of redress.<sup>75</sup>

<sup>70</sup> See the 'Ghali Set of Ideas' which was promoted in 1992 by the then-UN Secretary General, Boutros Boutros-Ghali and endorsed by the UN Security Council. See UN Security Council Resolution 774 (26 August 1992), paras. 2-3.

<sup>71</sup> See the Annan Plan, Foundation Agreement, 'Main Articles', Article 10(1) (31 March 2004).

<sup>72</sup> This inference is strengthened by the Court's reference to the device included in the Annan Plan (and still incorporated in the September 2011 Turkish Cypriot property proposal) of the post-settlement Cyprus government formally notifying the Court that the settlement agreement constituted 'a domestic remedy for the solution of all questions related to affected property in Cyprus'. See ECtHR, *Demopoulos*, para. 15.

<sup>73</sup> ECtHR, *Demopoulos*, para. 127.

<sup>74</sup> See TRNC, Law 67/2005, articles 8-10.

<sup>75</sup> ECtHR, *Xenides-Arestis v. Turkey* (Admissibility), pp. 44-45.



Significantly, the Court does not object to the principle of bizonality as it is expressed in both the Annan Plan and the Turkish Cypriot Law creating the IPC. However, it neither explicitly endorses this principle nor treats it as sufficient justification for limiting the rights of dispossessed owners. From the Court's point of view, bizonality appears to be a political principle that can become legally relevant only if it is part of a negotiated Cyprus settlement. Therefore, the limitations on the exercise of property rights imposed by the IPC scheme are deemed justified in order to protect rights at the *individual* level (i.e., current users) but not at the *collective* level (i.e., an entire community). Indeed, from this perspective, the *Demopoulos* decision mirrors the Court's earlier determination in *Loizidou*. The latter, it will be recalled, affirmed the rights of individual claimants who had been denied access to their property, while not endorsing an extension of such rights to the collective level in the form of a blanket right of return, as has often been asserted by Greek Cypriots.

If compliance with human rights law is taken as the paramount consideration, it follows from the above that an approach similar to that stipulated in the Annan Plan – namely one in which the property rights of the Greek Cypriots are balanced against the rights of those now using the property – constitutes a legally sound starting point for the current property negotiations. More generally, the ECtHR jurisprudence on Cyprus indicates that a property regime based on bizonality, including restricted restitution and return in areas not subject to territorial adjustment, would pass the Court's scrutiny if made part of a mutually agreed political settlement.

## CONCLUSION

The ECtHR's 2010 *Demopoulos* decision represents a turning point in the ongoing process of seeking an end to the Cyprus conflict, but does not constitute (nor was it meant to) a resolution of the underlying issues as such. Emanating from this decision is the central message that a negotiated solution represents the best way to uphold human rights in the context of the Cyprus property issue. Unfortunately, the reception of the decision has been characterized by a predictable combination of triumphalism in some quarters and allegations of the Court's politicization in others, accompanied by a general failure to seek a shared understanding of its practical import and convey this to the broader Cypriot public.

In this case, the Court's recognition of the IPC as an effective remedy disappointed many Greek Cypriots who had hoped that the earlier *Loizidou* line of decisions would ultimately contribute to a resolution of the property issue within a framework dominated by restitution, rather than compensation or property exchanges. Greek Cypriot dissatisfaction is also fed by the fact that one of the grounds at least tacitly recognized by the Court as a legitimate reason to deny restitution is the recognition of rights to claimed properties by their current occupants.<sup>76</sup> Yet the Court's decision to shape and then recognize a unilateral redress mechanism by Turkey and, by extension, the TRNC is not only explicable in light of its caseload but also arguably justified in light of the principle of subsidiarity. Moreover, the rationale for a number of apparent exceptions to the Court's case-law on protection of property and the right to the home in favour of Greek Cypriot displaced persons appears to have weakened with the passage of nearly four decades since their displacement and the failure of the political leadership to arrive at a negotiated settlement.

Meanwhile, any Turkish and Turkish Cypriot temptation to view the Court's approval of the IPC as a resolution of the issue entirely in their favour would be hasty. The Court's case-law, taken as a whole, effectively rules out the original Turkish Cypriot goal of 'global exchange and compensation' and leaves plenty of incentive to negotiate. While the approval of the IPC mechanism allows in theory for the resolution of most Greek Cypriot property claims through compensation, it does so at a cost that would likely be ruinously expensive if consistently applied in all cases.<sup>77</sup> Perhaps most salient, even if the TRNC, backed by

<sup>76</sup> ECtHR, *Demopoulos* (Admissibility), para. 117.

<sup>77</sup> See, Oğuz Çılsal, Antoniadou Kyriacou and Mullen, *The day after III: The Cyprus peace dividend for Turkey and Greece*, PRIO Cyprus Centre, Nicosia, 2010.

Turkey, could afford to 'buy' ownership of the land it controls via the IPC, this expense would still not lead to the normalization and reconciliation that can come only through a negotiated settlement.

Decades of negotiations and litigation have not brought about a solution of the property issue. This has not been a futile exercise, however. A reservoir of lessons and ideas has emerged that can provide valuable guidance in the continuing search for a solution. The most important lesson may be that the property issue will not be resolved if it is approached as a battle to be *won* by one side at the expense of the other. Rather, it is best viewed as a complex problem that can be resolved only by way of compromise. The injuries suffered by both sides will indeed need to be recognized. By the same token, it must be understood that these injuries can never be redressed in their entirety.

The report can be ordered from:  
PRIO Cyprus Centre  
P.O.Box 25157, 1307 Nicosia, Cyprus  
Tel: +357 22 456555/4  
prioctypruscentre@cytanet.com.cy

This report can be downloaded from: [www.prio.no/cyprus](http://www.prio.no/cyprus)



Since 1995, the European Court of Human Rights has frequently ruled on property claims arising due to the Cyprus problem. Taken as a whole, the resulting judgments have served to establish parameters that should inform any viable resolution of the Cyprus property issue.

The Court's rulings are not meant to resolve the property issue. However, they do effectively define a set of objective legal norms that any negotiated solution compatible with the European Convention on Human Rights would be expected to satisfy.

The agreed objective of the ongoing Cyprus negotiations is *reunification on a bizonal* basis. The italicized terms represent a compromise between competing visions of an appropriate Cyprus solution: the Greek Cypriots have long favoured a unitary state while the Turkish Cypriots have typically sought to maintain the distinctive identity of their numerically smaller community. These visions, which would need to be reconciled in any viable solution to the Cyprus problem, are rooted in the two communities' contradictory perceptions of the post-1974 split.

In this context, the Court's judgments do no more – and no less – than to exclude the more extreme aspects of the proposals that have been put forward by the two sides. As a result these judgments delineate only the outer parameters of an acceptable solution. Within these parameters there remains much space for political negotiations to arrive at a mutually acceptable compromise.

ISBN: 978-82-7288-393-4



The report can be ordered from:  
PRIO Cyprus Centre  
P.O.Box 25157, 1307 Nicosia, Cyprus  
Tel: +357 22 456555/4  
prioCypruscentre@cytanet.com.cy

This report can be downloaded from: [www.prio.no/cyprus](http://www.prio.no/cyprus)