

Displacement in Cyprus

Consequences of Civil
and Military Strife

Report 3

Legal Framework in the Republic of Cyprus

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IN THE REPUBLIC OF CYPRUS**

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- The Framework Convention for the Protection of National Minorities
- The Covenant for Civil and Political Rights and the Convention Against Torture and Inhuman and Degrading Treatment or Punishment.

EU law (EU treaties, regulations, directives and ECJ decisions)

EU treaties

- Treaty on European Union (consolidated version)
- EU Charter of Fundamental Rights

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List of Abbreviations

CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
EJC	European Court of Justice
ECtHR	European Court of Human Rights
IPC	Immovable Properties Commission
TRNC	Turkish Republic of Northern Cyprus

1. THE DISPLACEMENT AND PROPERTY QUESTION: THE BROADER LEGAL FRAME

This study addresses the legal aspects of *displacement and property* as they are affecting the Republic of Cyprus and its citizens, focusing on two distinct areas of law and policy: First, the law and policy regime dealing with the provision of services and benefits to Greek-Cypriot displaced persons and others who have properties in the north following the 1974 war;¹ and secondly, the legal issues relating to the properties of displaced persons, Greek-Cypriots and Turkish-Cypriots, regarding the questions of ownership and the rights to property as provided by law in the Republic of Cyprus.

The study first introduces the displacement and property question in Cyprus by placing it in its broader legal frame. It then outlines the regulations and provisions relating to accommodating and housing displaced persons, followed by an introduction to the legal regime on property. This section constitutes the bulk of this study which consists of three interconnected parts: (a) the legal sources, procedural mechanisms, substantive law and practices relating to the properties of displaced persons; (b) the properties of Greek-Cypriot displaced persons and; (c) the properties of Turkish-Cypriots in the area under the control of the Republic.

This study does not deal with the treatment by the Turkish-Cypriot administration of the property question in the northern part of Cyprus, as this evolved in the post-1974 era.²

¹ The report focuses on legal and policy aspects with regard to the temporary accommodation of Greek-Cypriot displaced persons in the Republic of Cyprus as well as various plans and benefits to house them and support them. It does not deal with the immediate 'crisis management' and longer term socio-historical and economic aspects of policy responses. Such matters were discussed at the conference, *Envisioning A Future: Towards A Property Settlement In Cyprus, Conference Report*; see N. Trimikliniotis and B. Sojka-Koirala (2011) *Envisioning A Future: Towards A Property Settlement In Cyprus, Conference Report*, Conference organised by PRIO Cyprus Centre, Home for Cooperation, Buffer Zone, Nicosia, 30 September 2011, PRIO Cyprus Centre).

² For a study of this subject please see the report by Ayla Gurel from the Displacement and Property Project.

2. REGULATIONS, PROVISIONS & BENEFITS FOR TEMPORARY SETTLEMENT OF DISPLACED PERSONS

2.1 The post-war measures for displaced persons

In the post-1974 period a number of incentives were offered to displaced hoteliers, developers, industrialists and landowners. These included the provision of state land, low or no-interest loans and other measures to reactivate this section of the population. The purpose was to develop the part of the Famagusta district that had not been occupied by the Turkish army, to build infrastructure such as roads and services and to re-build the tourist industry. The state-led developmental projects aimed at boosting employment and utilizing the labour force in the classic model of 'pump priming'. A key institution in the implementation was the Planning Bureau, which directed projects to developing hotels, light industry and agricultural restructuring, initially in the Famagusta district and eventually in the other districts where displaced persons settled, mainly Limassol. In Ayia Napa, which in 1974 was a small fishing village, a number of hotels were built along the coastline, often bearing the same names as the hotels which their owners left behind in 1974 in Famagusta and Kyrenia. The reason the authorities chose the Famagusta district for immediate investment in the form of 'pump priming' was because that district received a very large number, if not the majority, of displaced persons. It was the nearest exit from the occupied zone in the district and received thousands of displaced persons right through from the Karpasia peninsula to the city of Famagusta. Most displaced persons had gathered under carob trees, seeking temporary shelter. Also, the Famagusta region was the main tourist-developed area, so it had the necessary infrastructure and was available for further development.

Displaced persons were utilized in the implementation of these projects either as cheap labour or in a more professional capacity that made use of their entrepreneurial skills and experience. During those hard times, when unemployment reached over 30% and basic amenities and shelter were scarce, the urgency for job creation outweighed all other considerations and dominated the logic of crisis-management measures.

Those who qualify as displaced persons are only those who have been provided with a 'refugee card' and, up to very recently, their male line descendants. It does not include those persons who resided in the area under the control of the Republic but whose properties lay in the north of the country. There are no measures covering this group.

2.2 Institutions for the needs of displaced persons

2.2.1 Displaced persons- equal distribution of burdens

The Central Forum for the Equal Distribution of Burdens³ was set up in 1989 by Law N.141/1989⁴ as a legal person of Public Law. Its primary aim is to take action for the equal and fair distribution of burdens which resulted from the Turkish invasion and occupation, and ensure the restitution of pre-war credibility of persons who own property currently in the occupied area, in accordance with the value of such property. The Service of the Central Forum started work six months after the approval of the Regulations of the Scheme for the Restitution of the Pre-war Credibility of Owners of Occupied Inaccessible Immovable Property, which was compiled on 21.07.1995. Through this scheme, the Central Forum provides:

- Loans (housing, professional, for health care, to newlywed couples, to organizations and unions of persons).
- Guarantees for loans (professional, housing) granted by banking institutions specified by the Central Forum.
- Subsidisation of the interest paid on housing loans without the Central Forum's guarantee.

Loans under this scheme are granted in the following cases:

- Student loans including postgraduate and doctoral courses in recognized or registered educational institutions in Cyprus or abroad, post-secondary education, technical and vocational training.
- Professional loans (for professional premises or professional activity or expansion in Cyprus).
- Health care for serious or permanent illnesses, the treatment of which is costly and is not covered in full or sufficiently by the State or other sources.
- Newlywed couples who apply within the first three months of marriage.
- Organisations and unions of persons for acquisition or extension of premises, infrastructure (sports field) and equipment.
- Housing: for acquisition in Cyprus of suitable home for residence and for refurbishing and or extending self-owned residence in Cyprus to render it suitable for self-residence.

Persons eligible under the scheme are citizens of the Republic of Cyprus residing permanently in Cyprus (both natural and legal persons) who immediately prior to the 1974 war owned and continue to own occupied or inaccessible immovable property, or persons who inherit such property or to whom such property was given as a gift from a relative, the spouse of the person

³ In Greek: Κεντρικός Φορέας Ισότιμης Κατανομής Βαρών.

⁴ The law with all amendments up until 2005 law is available at <http://www.kentrikosforeas.org.cy/docs/12101.pdf>. The version in this link does not include the amendments of 2011 which were introduced by Law 52(I)/2011.

falling in any of these categories, third-degree relatives of such person (e.g. natural or adopted child, grandchild, sibling or nephew) and the spouses of such relatives.

In 2011 the above law was amended to empower the Council of Ministers to issue regulations on a number of issues, including the setting up and administration of a scheme for the restitution of the pre-war credibility of owners of property occupied or inaccessible as a result of the 1974 war, for advancing loans up to €105,000 for studies, up to €17,000 to newlywed couples, up to €85,000 for health care, up to €70,000 for professional premises and others. These regulations are submitted for approval to the House of Representatives, which can approve, amend or reject them within 60 days from submission. If the House fails to exercise its option to reject or amend them within this deadline, then upon the expiration of this deadline the regulations are published in the *Cyprus Gazette*⁵ and then enter into force.

2.2.2 Displaced persons - housing

The Service for the Welfare and Rehabilitation of Displaced Persons⁶ was established on 18.08.1974 following the Turkish invasion with a relevant decision of the Council of Ministers, in order to address the problem of displacement and to offer assistance and support to displaced persons. Through the years, this Service was restricted to providing housing assistance to displaced persons on the basis of the following schemes:

- Self-housing in a self-owned plot/ refurbishment of residence.
- Acquisition of an apartment/house.
- Self-housing in a government plot.
- Housing in a government condominium.

In November 1975, a *Central Committee for Selection and Criteria* was set up by a decision of the Council of Ministers (No. 14.471) with the mandate of examining applications for housing grants from displaced persons.

The Committee consists of:

- The Director of the Welfare and Rehabilitation of Displaced Persons Service.
- A representative of the Town Planning Department.
- A representative of the Social Welfare Services.
- A representative of the Pancyprrian Union of Refugees.
- A representative of the Pancyprrian Organisation for the Rehabilitation of Sufferers.
- A representative of the Committee for the Rehabilitation of Sufferers.

⁵ This is the official newspaper of the Republic of Cyprus.

⁶ In Greek: Υπηρεσία Μεριμνης και Αποκαταστάσεως Εκτοπισθέντων (ΥΜΑΠΕ).

In 2005 a law was enacted regulating the provision of housing assistance to displaced persons and setting out the criteria for eligibility.⁷ The law regulates the functioning and mandate of the Committee referred to above but extends the scope of the law beyond displaced persons to cover relatives of missing persons, relatives of persons killed in the war, persons with a greater than 40% disability or their children.

In 2011 there were five different schemes in force intended to offer housing assistance to displaced persons. The conditions of eligibility for all schemes include the following: applicants must be permanent residents of Cyprus, at least one of the members of the family must be in possession of a "refugee identity card";⁸ the applicant and all members of his/her family must not own any other immovable property of significant value. Some schemes carry income criteria whilst others do not. Following below is a brief description of these schemes.

(a) Provision of housing unit in a Condominium for the Housing of Displaced Persons

Eligible persons are those who reside permanently in Cyprus,⁹ are in possession of a refugee identity card and do not own any other immovable property of significant value. In case of a family, one of the spouses must have a refugee identity card. The restriction as to ownership of another property applies not only to the applicant but also to his/her family members. Also, the annual income of the single person or the family must not exceed €20,500,¹⁰ with a discount of €1,280 for every dependent.

(b) Provision of a state-owned plot of land for self-housing

Eligible persons are permanent residents of Cyprus who are in possession of a refugee identity card and do not own (and none of their family members own) any immovable property of significant value. In the case of a family, only one spouse needs to have such a card. Persons eligible under this scheme receive a free state-owned plot of land and financial assistance to build a house, both of which depend on the size and composition of the family. A single person

⁷ Law on the provision of housing assistance to the displaced, sufferers and other persons and on determining criteria and preconditions for its granting N. 46(I)/2005, available at [http://www.mof.gov.cy/mof/gpo/gpo.nsf/All/19F2C373D957C500C2256FFF001D8B11/\\$file/Parartima%201o%20Mer%20os%20I.pdf?OpenElement](http://www.mof.gov.cy/mof/gpo/gpo.nsf/All/19F2C373D957C500C2256FFF001D8B11/$file/Parartima%201o%20Mer%20os%20I.pdf?OpenElement).

⁸ In Greek: Προσφυγική ταυτότητα. A card provided to all persons who meet the criteria to be classified as displaced persons.

⁹ Following the temporary placement of displaced persons in organized camps in the aftermath of the 1974 war, the government decided to build permanent housing to accommodate them. This began in 1976, with Town Planning authorities building low-cost, medium-sized condominiums, where apart from houses there are commercial centres housing other services, such as youth clubs, medical centres, old people's homes, etc. Until 2000, a total of 65 state condominiums had been completed, which include 14,000 housing units, already accommodating around 50,000 displaced persons.

¹⁰ This amount is calculated by taking into account the gross annual income of all working members of the family excluding thirteenth salary, any extraordinary income and grants from any public funds or alimony.

who is in possession of such a card is granted a house in half a plot. The grant for a one-bedroom house is €22,210, for a two-bedroom house €27,330 and for a three-bedroom house €31,610. For elderly people residing with their children the grant is €13,670 or €9,740 depending on whether or not a kitchen is included, whilst for building a new bedroom the grant is €8,550. For assistance to families created after 20 July 1974, the annual income may not exceed the following amounts: €21,360 for two-member families; €22,545 for three-member families; €26,140 for four-member families; €28,655 for five-member families; €29,985 for six-member families; €32,100 for seven-member families and €20,500 for single persons. For the purposes of calculating the aforesaid income, a discount of €1,280 is offered for each dependent; in the case of a couple, the income of the highest earner will be taken into account but only $\frac{1}{4}$ of the income of the lower earner will be taken into account, whilst in the case of a single parent only $\frac{2}{3}$ of his/her annual income will be taken into account.

(c) Provision of financial assistance for the purchase of house or apartment or for self-housing in a self-owned plot

There are no income criteria for this scheme. Eligible persons are entitled to the following grants, depending on the size and composition of their families: €37,600 for a one-bedroom house/apartment; €51,250 for a two-bedroom house/apartment; €68,350 for a three-bedroom house/apartment; €14,350 for single persons, €13,670 or €9,740 for elderly persons cohabiting with their children and depending on whether a kitchen is included or not; €8,500 for building an extra bedroom. The ratio between the number of bedrooms and the size/composition of the family is as follows: a one-bedroom residence for a couple; a two-bedroom residence for a two-member family other than a couple; a two-bedroom residence for a three-member family; a two-bedroom residence for a four-member family; a three-bedroom residence for a four-member family where the children are of a different sex; a three-bedroom residence for a five-member family; a three-bedroom residence for a six-member family but if three out of the four children are of the same sex then the sum for building an extra bedroom is also granted.

(d) Subsidizing rent

Persons eligible for rent subsidies are those renting a house or an apartment in Cyprus for their permanent residence, whose income range is between €14,284 and €26,876. The amount of the monthly subsidy ranges between €66 and €213 depending on the composition of the family.

(e) Housing in Turkish-Cypriot properties

This is a special category addressed in section 3.4 dealing with Turkish-Cypriot properties. Contrary to the schemes analysed above which create rights, this scheme does not automatically create any rights entitling Greek-Cypriot displaced persons to demand a particular Turkish-Cypriot property. Rather, it creates a regime of considerable discretion on the part of the Service for the Administration of Turkish-Cypriot Properties to allocate the particular property.

3. THE REPUBLIC OF CYPRUS REGIME GOVERNING THE PROPERTY OF DISPLACED PERSONS

The property rights of displaced persons in Cyprus are very much ingrained within the broader legal order governing property relations and the system protecting the rights of persons in the country. This study only covers the situation in regard to the property rights of persons as enshrined in the laws of the Republic of Cyprus, which are integrated within the EU legal order and the legal system established by the European Convention of Human Rights (ECHR). Given the applicability of the EU *acquis* and of international legal instruments such as the ECHR, the study will deal with the operation of these instruments and their implication with regard to the property rights of displaced persons.

The hierarchy of laws sets out the primacy or supremacy of certain instruments over subordinate legal authorities, in case of conflict or inconsistency. The hierarchy of laws in Cyprus is organized in the following order:

- EU law is supreme (EU treaties, regulations, directives and ECJ decisions).
- International Treaties such as the ECHR are superior to domestic (national) law.
- The Constitution takes precedence over other domestic laws.
- Laws of the Republic of Cyprus.
- Cypriot subordinate legislation and other binding authorities.

3.1 The supremacy of EU law and the property regime in Cyprus

3.1.1 EU law supremacy and the property regime: Generalities

The supremacy of EU law vis-à-vis member states' national law is well established in EU law: in situations where there is a conflict between the laws of member states and European Union law, European Union law prevails.¹¹ The European Court of Justice ruled that the EU Treaty provisions are capable of having direct effect before the national courts of EEC member states. The EU constitutes "a new legal order", where individuals are entitled to invoke EU Treaty provisions against member state governments in national courts as EU Treaty provisions have

¹¹ See *Costa v ENEL* [1964] ECR 585.

direct effect.¹² Moreover, Cypriot courts are obliged, in some cases, to go as far as *disapplying* national law in order to give effect to European Community law.¹³ Up until EU accession, the Constitution was the supreme law of the country, capable of annulling national laws if these were deemed by the Courts to be ‘unconstitutional’. In July 2006, the Cypriot Constitution was amended to give supremacy to EU laws.¹⁴ However there are several examples in judicial practice suggesting that Courts continue to apply national laws according to the hierarchy which applied in the pre-accession period.¹⁵

Even since 1969, “fundamental rights are enshrined in the general principles of Community law and protected by the Court”.¹⁶

In addition, Article 6 of the Treaty on European Union (consolidated version), provides:

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union’s competences as defined in the Treaties.

¹² *NV Algemene Transporten Expeditie Onderneming van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] Case 26/62 ECR 1. The court ruled: “The Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields and the subjects of which comprise not only member states but also their nationals. Independently of the legislation of member states, community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the treaty, but also by reason of obligations which the treaty imposes in a clearly defined way upon individuals as well as upon the member states and upon the institutions of the community.”

¹³ Case C-213/89 *Factortame* [1990] ECR I-2433.

¹⁴ Law 127(I)/2006 (28.07.2006) added a new article to the Constitution providing that nothing therein stated shall nullify laws, acts or measures rendered necessary as a result of Cyprus’s obligations as an EU member state, or to prevent Regulations or Directives or other binding legal measures enacted by the EU or its bodies from having force in Cyprus.

¹⁵ See, for example, the 2010 Cyprus Country Report of the European Network of Legal Experts in the Non-discrimination Field available at http://www.non-discrimination.net/content/media/2010-CY-Country%20Report%20LN_FINAL_0.pdf.

¹⁶ As per Case 29/69 *Stauder* [1969] ECR 419, par. 7.

¹⁷ See *Lenaerts and Van Nuffel* 2005, at 17-089.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

The EU acquis guarantees the right to property. The European Court of Justice has already ruled on the fundamental rights of ownership and property¹⁷ in cases protected by the constitutional law of the member states¹⁸ and Art. 1 of Protocol No. 1 to the ECHR.¹⁹ Wherever there is conflict of rights, interests and claims, fundamental rights are 'balanced' by applying the principles of 'proportionality' (see Lenaerts and Van Nuffel 2005, 17-090). The right to property has been codified within the *Charter of Fundamental Rights*, which is the first Bill of Rights of the EU and is now part of the primary law of the EU. The process of adopting the EU Charter has been aptly described as the "thorny road from Cologne to Lisbon" (Bojkov 2010), which inevitably reflects the contradictions and compromises that led to its adoption as a 'constitutional treaty',²⁰ or what one scholar referred to as "multilevel constitutionalism in action". Following the Treaty of Lisbon,²¹ the Treaty on European Union has fully integrated the Charter in the EU legal order as part of the acquis. The Charter is binding on all member states²² and is subject to the jurisdiction of the European Court of Justice (ECJ), which is "a piece in the larger constitutional picture" in the construction of the "European Res Publica" (Zetterquist 2011: 3). Article 17 of the EU Charter of Fundamental Rights²³ (herein referred to as the *Charter*) protects the right to property and declares:

Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

So far, no case has invoked this provision in Cypriot courts or before the ECJ, but this may change if cases are brought to justice invoking provisions of the Charter.

¹⁸ See 4/73 *Nold v Commissions* [1974] ECR 491.

¹⁹ For a discussion of the relevant case law, see Lenaerts and Van Nuffel 2005: 738; Micha 2010; Loucaides 2007, 2011.

²⁰ The Lisbon Treaty avoided the name 'Constitution of Europe', so as to avoid rejections in referendums, as had happened a few years before with the old constitution for Europe. As Valéry Giscard d'Estaing, former French President and President of the Constitutional Convention, noted in several European newspapers, 27 October 2007: "The Treaty of Lisbon is the same as the rejected constitution. Only the format has been changed to avoid referendums" (Jens-Peter Bonde, *From EU Constitution to Lisbon Treaty. The revised EU Constitution analysed by a Danish member of the two constitutional Conventions*, http://www.eudemocrats.org/eud/uploads/downloads/e-Lissabon_til_netnet.pdf (accessed 20.11.2011).

²¹ The Lisbon Treaty became law on 1 December 2009, eight years after European leaders launched a process to make the EU "more democratic, more transparent and more efficient". The treaty was ratified by all 27 member states after it was ratified by the Czech Republic on 3 November 2009. The planned constitution was rejected by French and Dutch voters in 2005; the Lisbon Treaty which succeeded it was also rejected by Irish voters in June 2008, but this was reversed in a second referendum in the Irish Republic on 2 October 2009.

²² By virtue of Art. 6(1) of the Treaty of the European Union (herein after referred to as TEU) as amended by the Lisbon treaty.

²³ This is part of Chapter II, "Freedoms".

The landmark case of *Apostolides v Orams*,²⁴ which did not directly involve EU law as regards the right to property, examined whether a Cypriot Court ruling regarding the property of a Greek-Cypriot displaced person in the northern part of Cyprus (where the operation of the *acquis* is suspended) can be executed in the UK. The uniqueness of this case lies in the fact that, for the purposes of the execution of a decision regarding land situated in the northern part of Cyprus, remedy was sought via the EU to deal with the legal aspects of the property question in Cyprus, rather than through the ECtHR.²⁵ The plaintiff, a Greek-Cypriot owner of property in the Turkish-controlled northern Cyprus, sued two UK nationals who bought his property after he had been evicted from it by the Turkish Army, and secured a judgment from a Cypriot Court against the defendants to demolish the house they built on his property and to return the property to him. He then sought to have this judgment executed in UK where the trial Court rejected his application. The plaintiff then appealed to the UK Court of Appeal which, in turn, sought a ruling from the ECJ on the question of property rights of Greek-Cypriots in the northern part of Cyprus and the rights and obligations that derive from the suspension of the application of the *acquis communautaire* in the northern part of Cyprus. The ECJ ruled that the suspension of the application of the *acquis* in the areas outside the control of the Republic of Cyprus does not preclude the application of Council Regulation No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to a judgment delivered by a Cypriot court sitting in southern Cyprus concerning land situated in the north. The case of *Apostolides v Orams* received considerable publicity both in Cyprus and abroad, more for its serious political repercussions²⁶ and less for its legal reasoning, which was straightforward and uncontroversial.²⁷

The principle of the case paves the way for residents in other EU countries to use their national judicial systems to seek judgments against persons who own property in Cyprus and in other EU countries and to enforce these judgments in Cyprus. The case was received very differently by the two communities as well as by the various legal scholars commenting on the case. The ruling must be read together with the recent case of *Demopoulos V. Turkey* (46113/99), as it illustrates the limitations of individual legal courses in pursuing property rights in the absence of a comprehensive settlement to the Cyprus problem.²⁸

²⁴ C 420/07. The decision was handed on 28.04 2009: <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Rechercher&doctrequire=alldocs&numaff=C420/07&datefs=&datefe=&nomusuel=&domaine=&mts=&resmax=100>.

²⁵ On the question of property rights the leading cases were brought before the ECtHR rather than the ECJ, as will be discussed later.

²⁶ See "Turkish-Cypriot leader feels weak but hopeful on peace talks", *Hurriyet Daily News*. <http://www.hurriyetdailynews.com/n.php?n=turkish-cypriot-leader-feels-weak-but-hopeful-on-peace-talks-2009-08-08>. Also see, for instance, M. Hatay & R. Bryant (2009) 'Suing for Sovereignty: Property, Territory and EU's Cyprus Problem', *Global Political Trends Center Policy Brief*. Istanbul: Global Political Trends Center, available at <http://www.gpotcenter.org/dosyalar/PolicyBrieff.pdf>

²⁷ See Skoutaris 2010; Laulhé Shaelou 2011.

²⁸ For a discussion of this see De Baere 2010; Skoutaris 2010; Paraskeva 2010; Laulhé Shaelou 2011.

3.2 The European Convention of Human Rights (ECHR): Supremacy over domestic legislation

The ECHR forms part of the Cypriot legal order²⁹ and its provisions have supremacy over domestic legislation.³⁰ Particularly relevant for the property rights of Cypriot displaced persons is Article 1, of the First Protocol to the ECHR, which stipulates:

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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

The other ECHR provision which is relevant to displaced persons is found in Article 8:

Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) 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 a democratic society 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.

Article 8 (2) allows for certain limitations to the above right, provided these are justified “in accordance with the law” and “necessary in a democratic society”.³¹

Article 14 of the Convention provides:

The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

²⁹ It is considered that the ECHR was applicable since colonial times and continued to apply after independence by virtue of the principle of succession adopted by Art. 8 of the Treaty of Establishment, which provides that all international obligations and responsibilities of Government of the UK are assumed by the Government of the Republic of Cyprus (see Tornaritis 1983: 1-2). In any case, the ECHR was ratified by law 38/62.

³⁰ Art. 169 of the Constitution of the Republic of Cyprus provides that such treaties, conventions and agreements have “superior force to any municipal law on condition that such treaties conventions and agreements are applied by the other party thereof”.

³¹ For more on this see Harris et al (2009).

Article 13 of the ECHR, which requires an effective remedy for violations of the rights and freedoms set out in the Convention, is often invoked in cases examined by the European Court of Human Rights (ECtHR). Finally, in some occasions, Article 18 is invoked, which prohibits restrictions to rights guaranteed under the ECHR for any purpose other than those for which they have been prescribed.³²

3.2.1 The legal order and politics: The ECtHR and the Cyprus problem

Greek-Cypriot displaced persons are estimated to own 1,575,000 donum (2.1 million square meters) of land in the north; Turkish-Cypriots are estimated to own property of just under 435,000 donum in the southern part of the country.³³ This section examines the case law deriving from the ECtHR and how this has been used as a catalyst in the evolution of the property regime in Cyprus. A full and exhaustive examination of this issue is beyond the scope of this study. It is, however, necessary to examine some important aspects of this issue, which affect the development of the legal order, have an impact on the political aspects of the negotiations and affect attitudes as to the routes to pursuing the rights of displaced persons.

The current state of affairs as regards the law on the rights of Greek-Cypriot displaced persons owning property in the north has been shaped by developments in the ECtHR case law. The landmark case was *Loizidou v Turkey*³⁴ which, together with other court decisions at the time,³⁵ held Turkey responsible for the *continuing violation* of Art. 1, Protocol 1 to the ECHR. In its judgement, the ECtHR held that the responsibility of states who are signatories to the ECHR extends to acts outside their borders; that Turkey and not the 'TRNC' has effective control over the territory in northern Cyprus because of the large number of Turkish troops stationed there and the control it exercises over the area, whilst the 'TRNC' authorities are subordinate to Turkey. The Court further held that the mere fact that the property issue is at the centre of political debates does not absolve Turkey from its obligations under the ECHR. Turkey was sentenced to paying significant monetary damages for breach of the right of Loizidou to enjoy her property. In the case of *Loizidou*, as well as in three other applications concerning Greek-Cypriot property in the north,³⁶ the ECtHR found that property rights are inalienable. The failure of Turkey to provide an internal remedy rendered it responsible for the *continuing violation* of

³² For instance, in the *Demopoulos* case, Articles 8, 14, 13, 18 of the ECHR and Art. 1 of Protocol 1 to the ECHR were invoked by the applicants.

³³ According to the figures submitted to the UN by the two sides.

³⁴ *Loizidou v Turkey*, Judgment of 18 December 1996 (Merits), Reports of Judgments and Judgments (1996-VI).

³⁵ *Akdivar & Others v Turkey*, Application No. 21893/93, Judgment of 16 September 1996 (1996/IV). This case was about the destruction of the applicants' home during security operations in southeast Turkey.

³⁶ The fourth inter-state case *Cyprus v Turkey* 25781/94; *Demades v Turkey* 16219/90 and *Eugenia Michaelideou Developments and Mike Tymvios v Turkey* 16163/90.

the ECHR rights.³⁷ Also, in *Cyprus v Turkey*,³⁸ the Court held that there had been a continuing violation of Article 8 due to the refusal of Turkey to allow the return of Greek-Cypriot displaced persons to their homes in northern Cyprus. Having regard to that conclusion, the Court found unanimously that it was not necessary to examine whether there had been a further violation of that Article by reason of the alleged manipulation of the demographic and cultural environment of the Greek-Cypriot displaced persons' homes in northern Cyprus. Furthermore, the Court held, by 16 votes to one, that there had been a continuing violation of Article 1 of Protocol 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus were being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights.

So far there has not been any ruling by the ECtHR challenging the legality of the Guardian law, which governs Turkish-Cypriot property affairs in the Republic of Cyprus,³⁹ although this might change in the near future as further applications from Turkish Cypriots are examined by the ECtHR. And although the case of *Tymvios*,⁴⁰ who agreed with Turkey to exchange his property in the north with Turkish-Cypriot property in the south, has effectively undermined the institution of the Guardian, the future of the Guardian is likely to be determined by the way it will be viewed by the ECtHR, which will undoubtedly try to avoid receiving en masse applications by Turkish Cypriots claiming their properties in the south, as it did in the case of the Greek Cypriots.

In the *Xenides-Arestis* case⁴¹ the ECtHR followed, in essence, the rationale of *Loizidou* in that it refused to endorse the argument that the rejection of the Annan Plan by the Greek-Cypriot side had any legal effect. The ECtHR, however, recommended that Turkey chooses for itself the means by which to fulfil its obligations under the ECHR. Turkey alleged that, since August 2003, it had established the Immovable Properties Commission (IPC), which constituted "effective domestic remedy" to be utilized by the Greek-Cypriot owners of property in the north of Cyprus. One may conclude from the wording of this judgment that this recommendation was related to the fact that a huge number of applications by Greek-Cypriot owners were pending before the ECtHR (around 1400). It was left open, to be decided at a later stage, whether the IPC indeed constituted an effective remedy.

³⁷ For an analysis of this, see L. Loucaides (2007) 'The Protection of the Right to Property in Occupied Territories', pp. 121-141 and 'The right to Return', pp. 245-265, in Loucaides (2007); Paraskeva 2010.

³⁸ Application no. 25781/94, Strasbourg, 10 May 2001.

³⁹ The Turkish-Cypriot Properties (Administration and other Matters) Temporary Provisions Law 1991 as amended. This law is discussed later in this report.

⁴⁰ In the case of *Tymvios*, the ECtHR upheld the content of an amicable settlement between Mike Tymvios and Turkey, according to which part of the applicant's property in the north would be compensated for by an exchange with Turkish-Cypriot property in Larnaca. The ECtHR found that this agreement was consistent with the principles of the ECHR. The full title of the case is *Eugenia Michaelidou Developments Ltd and Michael Tymvios v Turkey* (just satisfaction-friendly settlement), no. 16163/90, 22 April 2008.

⁴¹ App. No. 46347/99

The establishment of a mechanism for restitution of or compensation for Greek-Cypriot properties in the north has brought about significant changes. Whilst in *Loizidou* the ECtHR found that Turkey is under an obligation to secure the rights and freedoms set out in the Convention in northern Cyprus, the judgement in *Cyprus v Turkey* went a step further and established that the remedies provided in the 'TRNC' had to be seen as domestic remedies of Turkey, assuring the Greek-Cypriots that this will not be interpreted as an indirect legitimisation of the 'TRNC'.⁴² The establishment of the IPC in the north was met with a positive response by the ECtHR.⁴³ In the case of *Xenides-Arestis v Turkey* the ECtHR gave specific guidelines as to what is needed for a compensation mechanism to be considered effective. By the time of handing down the judgement in *Demopoulos v Turkey*,⁴⁴ the ECtHR had made up its mind that the IPC met the necessary criteria: adequacy of redress, independence and impartiality, adequacy of the compensation and accessibility and efficiency of the remedy.⁴⁵

The case of *Loizidou v Turkey* "gave the green light, to Greek-Cypriot displaced persons to apply en masse" (Paraskeva 2010: 226); or so it was read by those who advised them.⁴⁶ By the time that the ECtHR examined the pilot case of *Xenides-Arestis v Turkey*⁴⁷ there were 1400 applications by Greek-Cypriot displaced persons pending; shortly afterwards, the number rose to 1500.⁴⁸ This trend was abruptly reversed by the ruling in *Demopoulos*, where the Court directed claimants to the Immovable Properties Commission (IPC) set up by Turkey in northern

⁴² An extract from the judgement reads: "101. The Court does wish to add, however, that the applicant Government's reliance on the illegality of the "TRNC" courts seems to contradict the assertion made by that same Government that Turkey is responsible for the violations alleged in northern Cyprus – an assertion which has been accepted by the Court (see paragraphs 75-81 above). It appears indeed difficult to admit that a State is made responsible for the acts occurring in a territory unlawfully occupied and administered by it and to deny that State the opportunity to try to avoid such responsibility by correcting the wrongs imputable to it in its courts. To allow that opportunity to the respondent State in the framework of the present application in no way amounts to an indirect legitimisation of a regime, which is unlawful under international law. The same type of contradiction arises between the alleged unlawfulness of the institutions set up by the "TRNC" and the applicant Government's argument, to be examined at a later stage (see, for example paragraphs 318-21 below), that there has been a breach of Article 13 of the Convention: it cannot be asserted, on the one hand, that there has been a violation of that Article because a State has not provided a remedy while asserting, on the other hand, that any such remedy, if provided, would be null and void.

102. The Court concludes accordingly that, for the purposes of former Article 26 (current Article 35 § 1) of the Convention, remedies available in the "TRNC" may be regarded as "domestic remedies" of the respondent State and that the question of their effectiveness is to be considered in the specific circumstances where it arises."

⁴³ See Loucaides 2011; Paraskeva 2010; Skoutaris 2010; Solomou 2010; Lailhe-Shaelou 2011, for alternative perspectives on the issues.

⁴⁴ App. Nos. 46113/99, 3843/02, 13751/02, 13466/03, 14163/04, 10200/04, 19993/04, 21819/04. At <http://www.echr.coe.int/echr/>. European Court of Human Rights (Grand Chamber), March 1, 2010.

⁴⁵ See Solomou 2010: 634.

⁴⁶ The Government did not officially sanction this; in general politicians who were also lawyers were more positively inclined in encouraging people, but there were also strong warnings voiced against turning the Cyprus problem from a political to a legal issue.

⁴⁷ Case number 46347/99, 22.12.2005, para. 38.

⁴⁸ Paraskeva 2010: 226.

Cyprus in order to examine applications by Greek Cypriot property owners, as a domestic remedy that needed to be exhausted before applying to the ECtHR. The ECtHR considered that the IPC was in a better position to judge matters on the basis that “an appropriate domestic body, with access to the relevant information, was clearly the most appropriate forum for deciding on complex matters of property ownership and valuation and assessing financial compensation, notwithstanding the time and efforts required from the applicants to exhaust domestic remedies”. Alternatively, claimants could choose to await a political solution. Also, the complaint of the applicant property owners for an ongoing interference with their right to a home failed for non-exhaustion of domestic remedies as this had not been brought before the IPC.⁴⁹ As a result of the ruling in *Demopoulos*, the number of applications listed as pending adjudication was reduced to 39 filed by Greek-Cypriots and 10 filed by Turkish-Cypriots.

There are different interpretations to the particular aspects of the *Demopoulos* judgement, especially with regard to the treatment of the right to a family home in balancing the rights of legal owners and current users. This has been subject to exaggeration, even distortion, depending on the political stance, which conditions the manner in which the particular judgement is viewed.⁵⁰ What is apparent is that in *Demopoulos*, the ECtHR did not hesitate to enter into the broader political context of the conflict in Cyprus, ruling that the complexity of the issues, “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.”⁵¹

The year 2011 saw a sharp increase in the numbers of Greek-Cypriots applying to the IPC,⁵² in contrast with previous years. The precise number of applications is not known, but the trend is clear. Nevertheless, this is denied by the official Greek-Cypriot side, fearing that if Greek-Cypriots apply to the IPC en masse this will inevitably impact the ongoing negotiations on the Cyprus problem. By contrast, the Turkish-Cypriot side welcomed this trend, perceiving it as a driving force in its favour in the negotiations as well as a tool to address the uneasy situation resulting from the high volume of applications to the ECtHR against Ankara by Greek-Cypriot refugees.

⁴⁹ In another case, the Court found that the facts did not disclose any present interference with the applicant’s right to respect for her home, as she had not been living in the family home for almost her entire life: Ariana Lordou Anastasiadou’s (application no.13751/02).

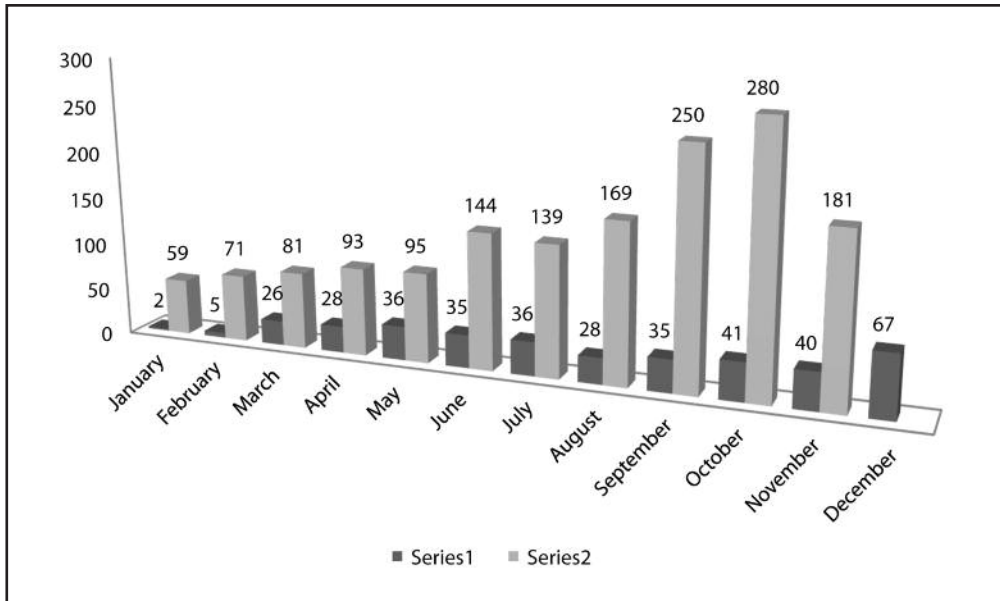
⁵⁰ If one examines the various scholarly papers referred to in this report which comment on the judgement, one can see the various reactions. The same subject has been subject to considerable public debate in the Greek-Cypriot and Turkish-Cypriots media.

⁵¹ *Demopoulos* (2010) 50 E.H.R.R. SE14 at 85.

⁵² See V. Vasiliou, ‘ΣΤΑ ΚΑΤΕΧΟΜΕΝΑ «Ροκανίζουν» τις περιουσίες’, *Politis*, 27.11.2011. The Attorney General has stated that he is unable to assess or verify the figures. On the basis of the figures the IPC publishes, applications pending before the IPC at the end of 2011 represented 3.3% of the total of Greek-Cypriot land in the north and about 10% of the Greek-Cypriot land which is considered to be ‘thorny’ in the negotiations. The IPC has received 2,414 applications representing 70 million square meters; at the final stage there are 277 Greek-Cypriot applications and apparently this refers to an area of 9 million square meters and for another 2 million square meters the applicants are said to have withdrawn their applications or were unable to establish ownership.

The rise in the numbers of Greek Cypriots applying to the IPC must be seen in conjunction with the handing down of the judgement in *Demopoulos* in March 2010, which directed Greek-Cypriot displaced persons to either apply to the IPC or wait for a solution to the Cyprus problem. Of course in light of the economic crisis, it is hard to attribute the increase in the number of persons applying to the IPC solely to the ruling in *Demopoulos*; there are other relevant factors, such as the general frustration with the lack of progress in the negotiations for the resolution of the Cyprus problem, especially after Eroğlu took office in the north; the deadline for the cease of operation of the IPC set by the 'TRNC' authorities (initially due to expire in December 2010 but subsequently extended); and the increasingly felt impact of the economic crisis, which is pushing many poorer displaced persons to desperate measures.

Chart showing the numbers of applications per month for the years 2010 and 2011, up to 24 November 2011⁵³



The ECtHR finding in *Demopoulos* has received varied reactions, like the ECJ case of *Apostolides* earlier; but this time it was the (pro)Greek-Cypriot legal scholars and political commentators who were critical and the (pro)Turkish-Cypriot ones who were jubilant. There is consensus amongst scholars, both critical and jubilant, that *Demopoulos* is a landmark case which has changed the direction of remedies after *Loizidou*: the flooding of the ECtHR by Greek-Cypriots

⁵³ From *Politis* 27.11.2011.

has certainly affected the finding of the Court, which had indicated that the IPC would be recognised as an effective internal remedy.⁵⁴ The judgement essentially directed Greek-Cypriot displaced persons to the IPC, which is according to the judgement neither “a sham, [n]or a smokescreen.” Many displaced persons who applied to the IPC, exhausted by the stalemate in the negotiations over the Cyprus problem and under pressure from the current economic conditions, had to accept settlements well below the amounts of damages initially claimed. In spite of this, any applications to the ECtHR are likely to further confirm the *Demopoulos* logic;⁵⁵ in any event, with the case of *Lordos and others*⁵⁶ the chapter of the en masse applications by Greek-Cypriots to the ECtHR has closed. The ECtHR did not embark on an interpretation of the legality or otherwise of the IPC as a ‘TRNC’ institution as such, but merely viewed it as a remedy set up by Turkey which was considered effective. Nonetheless, there are concerns from Greek-Cypriot experts that the potential legitimization of the IPC is likely to be relied upon by the Turkish-Cypriot side as precedent for future arrangements in the post-solution situation, even though, as a matter of fact, the IPC rarely allows restitution of the property, whilst the amounts it offers as compensation are too low.

A realistic assessment of the landscape at the ECtHR, as it developed following the massive numbers of applications of Greek-Cypriots suing Turkey and demanding restitution of their properties, is that there is a certain degree of discontent towards actors on the Greek-Cypriot side for having encouraged the massive applications to the ECtHR. Indeed, the trend that one may detect amongst certain Greek-Cypriot circles is to delude people that the Cyprus problem may be resolved through the ECtHR judgments, rather than through a political settlement. This is not only misguided but it also creates false expectations; the pendulum swings for or against one side to the other in disputes. Besides, when it comes to dealing with human rights it makes no sense to see them via the ethno-national lenses: we must equally contemplate the rights of ‘Others’ as well as our own.⁵⁷

In the case of *Demopoulos v Turkey*, the right to ownership is affirmed by the court as this cannot be written off or extinguished as a result of the Turkish military occupation,⁵⁸ also “the ‘TRNC’ regime was not regarded as being capable of depriving the property owners of title, only of possession” (as per para. 110 of the judgement). The key finding, however, which goes to the heart of *Demopoulos* as the *ratio decidendi* of the case, is that the IPC, as derived from the ‘TRNC’ legislation under “Law 67/05”, is declared as an “accessible and effective framework of redress in respect of complaints about interference with the property owned by Greek-Cypriots” (as per

⁵⁴ See the friendly settlement of *Tymvios*; see also, the remarks of the Court in the *Xenides-Arestis* case.

⁵⁵ The ECtHR is expected to issue its decision in eight pilot actions early in 2012. The question to be answered is whether the IPC is an *effective* domestic remedy or not.

⁵⁶ *Lordos and Others v. Turkey* (Application no. 15973/90).

⁵⁷ See Benhabib (2004) for the rights of others; also see Douzinas 2000.

⁵⁸ Para. 112 of the decision states that “the Court would eschew any notion that military occupation should be regarded as a form of adverse possession by which title can be legally transferred to the invading power”.

para. 127 of the judgement). Nonetheless, it is the Turkish Government that is held responsible to provide remedies to Greek-Cypriot displaced persons via the IPC, which is essentially an organ of Turkey: "The Court notes that the Turkish Government no longer contested their responsibility under the Convention for the areas under the control of the 'TRNC' and that they have, in substance, acknowledged the rights of Greek-Cypriot owners to remedies for breaches of their rights" (as per para. 108 of the judgement). The 'TRNC' is not directly or indirectly recognised and remains illegal; nonetheless the Court applies and in fact extends the "Namibia principle" to distinguish between an unlawful regime's acts which aim to correct wrongs it had done in the past from the lawfulness of the regime itself: "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" (as per para. 96).

The Court places its decision in the political context of the Cyprus problem noting that it is the responsibility of the political leadership to reach a settlement to "a problem that should have been resolved by all parties assuming full responsibility for finding a solution on a political level" (para. 85). Rather obscurely, the Court stresses that displaced persons are not *required to apply* to the IPC, as "they may choose not to do so and await a political solution" (para. 128). It considers it "arbitrary and injudicious" to attempt "to impose an unconditional obligation on a Government 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" (para. 116). It points out that "other considerations, in particular the position of third parties" must be taken into account and affirms the adequacy of the three alternative remedies, i.e. restitution, compensation and exchange:

Property is a material commodity which can be valued and compensated for in monetary terms. If compensation is paid in accordance with the Court's case-law, there is in general no unfair balance between the parties. Similarly, [the Court] considers that an exchange of property may be regarded as an acceptable form of redress (para. 115).

Each remedy must be considered in the light of the circumstances before it, including the passage of time, the impossibility of restitution and avoidance of further wrongs. The Court is obliged to act in the light of the specificities of each individual case:

The Court's interpretation and application of the Convention . . . cannot, if it is to be coherent and meaningful, be either static or blind to concrete factual circumstances (para. 85).

Remarks relating to the time factor were controversial, as they seemed to run counter to the basic principle of affirming the title deed: "the attenuation over time of the link between the holding of title and the possession and use of the property in question must have consequences on the nature of the redress" (para. 113). Also, if there are factors making restitution impossible then, naturally, compensation for the value of the property should be offered (para. 114). The Court sought to balance the remedy to the displaced owner with the rights of users in a manner that does not cause disproportional hardship:

It is still necessary to ensure that the redress applied to those old injuries does not create disproportionate new wrongs. (para.117)

Another contentious aspect of the decision relates to the compensation for loss of use, as the Court questioned whether the legal title carries any benefits:

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 (para.111).

As regards the claim to the right to family and private life under Article 8 of the ECHR, the Court requires a “strong legal and factual link between ownership and possession.” Following this logic, the Court considers that a legal owner who was two years old in 1974 could not have a claim under this article; this, despite the fact that, according to scholars, in previous cases the Court has ruled in favour of Greek-Cypriot applicants who were over 10 years old.⁵⁹

There are obvious legal and political problems with the reasoning in *Demopoulos* which attracted criticism about the way in which the ECtHR politicized the matter.⁶⁰ The overtly political overtones used by the ECtHR were instrumental in causing reactions:

...[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.

However, it has to be recognised that all decisions relating to any aspects of the unresolved Cyprus problem, and indeed all decisions regarding protection of human rights, contain political elements and/or implications and are, by their very nature, political, as they must inevitably address difficult political questions such as:

1. What rights and how far do they extend?
2. Whose rights and how should the Court balance conflicting rights and interests?
3. How to avoid injustices taking into account the socio-economic and political context in dealing long-drawn political disputes and human rights violations?

It appears that only when commentators disagree with the *political direction* of a decision do they criticise the Court for being ‘political’; when in fact, they should be critiquing the *kind of politics they disagree with*. The ‘game’ of presenting the law as somehow above and beyond politics is nowhere more absurd than in political disputes such as the Cyprus problem. Of course, as a result of an essentially political problem there may be, and invariably there are, legal violations of human rights and legal issues that ensue; this, however, does not make the legal issues/aspects any less political. In this regard, nationalists on both sides subordinate all legal

⁵⁹ The authors are grateful to Mr. Andreas Symeou for pointing this out and for providing the necessary documentation.

⁶⁰ See, for example, Skoutaris 2010; Lulhá Shaelou 2011; Polyviou and Arakelian 2011; Loucaides 2011.

disputes to their own ethno-national projects disguised as 'national interest' as perceived and articulated from their own ethno-communal and ideological perspectives.

A major problem is that *Demopoulos*, rather than clarifying the law by providing a sense of legal certainty, has generated *more uncertainty* as a mechanism of redress pending a solution or in the absence of the solution. Also it failed to address how best to deal with violations of property rights, given the problematic nature of the remedy provided by the IPC, in the context of an absence of a political settlement. Moreover, policy and expediency considerations of a Court flooded with cases cannot but be highly relevant. As Lahlé Shaelou (2011) points out:

[O]nce the 'Loizidou-type' remedy was established, the Court had to find a *practical* way out of this massive influx of cases, while at the same time preserving the 'constitutional' nature of the remedy thereby created (through the application of the Convention as an instrument of *European public order*). The solution was inherent in its case-law: it ruled that the remedies available in the 'TRNC' could be regarded as domestic remedies of Turkey, thereby opening the way to the application of Article 35(1) of the Convention while allegedly maintaining its existing case-law with respect to the property rights of displaced persons. With *Demopoulos*, however, it is still not clear how and to what extent this decision is protective of fundamental rights in Europe as it appears to promote a piecemeal approach to Turkey's liability under the Convention and to weaken legal title to property ownership. (p. 43)

The situation does not quite fit the *transitional justice model*.⁶¹ It is correct that the situation in Cyprus can fit in the general category where property was "unlawfully or unjustly taken during a period of authoritarian rule" (Allen 2007: 1), where the ECtHR took a "robust approach in requiring states to correct the abuse of human rights that occurred in the past" (Allen 2007: 44). It is, however, questionable whether the ECtHR has successfully discharged its duties to deliver justice in the evolution of ECtHR case-law from *Loizidou* to *Demopoulos*. It is true that Ankara has followed the guidelines of the ECtHR in establishing a mechanism to redress property violations, however the criticism levelled at the *Demopoulos* judgement questions the achievement of the basic objective of *transitional justice*: it resonates well with Allen's critique (2007: 45) that the ECtHR is more interested in "the all-important value of maintaining the stability of property relations". Moreover, the transitional justice arrangements require the broader settlement of the Cyprus problem, one aspect of which is the property issue. Hence, the logic of treating *Demopoulos* as a "transitional-type",⁶² or a "quasi-transitional" type of case seems quite odd. Skoutaris (2010: 11) refers to this as follows:

⁶¹ Transitional justice is defined as 'processes designed to address systematic or widespread human rights violations committed during periods of state repression or armed conflict, where human rights violations are defined as extrajudicial killings, disappearances, torture, and arbitrary arrest and imprisonment' (Olsen, et al. 2010: 805).

⁶² Williams and Gurel (2011:16) claim that "the Court appears to have used its 'admissibility' rules (those governing whether it has jurisdiction over cases) to avoid reaching a decision on property claims arising from 'transitional' settings even where such claims might be admissible in ordinary (non-transitional) circumstances." See also Williams (2011).

As has become obvious from this analysis, the Court of Human Rights over the last decade has gradually allowed for the creation of a quasi-transitional justice mechanism that can provide for settlement of the property aspect of the Cyprus issue even if the achievement of a comprehensive political solution has proven still to be a chimera.

Yet, the very same mechanisms of the failed Annan plan which would have been used to reunite the country in 2004 should the plan had been approved then, paradoxically lend themselves to the criticism of laying the pathway to the secessionist drive. It is highly problematic to take ideas and rules contained in the Annan plan in a totally different logic of a reunified Cyprus out of context, so as for these to be used to ferment partition. This would push further away the possibility of a settlement, whose broad perimeters have been agreed upon as 'bizonal bicomunal federation'.⁶³ To quote Skoutaris again:

[I]t is obvious that such a mechanism, together with a legal framework that would provide for direct trade relations with EU Member States other than Cyprus, may lead to the upgrade of the secessionist entity in the North or its "Taiwan-isation".

This brings us back to both the political nature of judgements as well as the relation between the EU and the ECtHR legal orders, which are part and parcel of the Cypriot legal order. How are they linked? Are they in contradiction with each other? As Koutrakos (2010: 306) aptly concludes:

The judgments in *Demopoulos* and *Apostolides* illustrate the acutely political nature of disputes which Europe's judges face. Whilst they suggest different approaches, their implications in the political sphere may have similar effects. It is recalled that direct negotiations between the two parties in Cyprus have been underway since October 2008, and that the European Commission has resurrected a proposal for direct trade between the European Union and Northern Cyprus: Turkey views the latter as a precondition for opening its ports and airports to trade with the Republic of Cyprus, whilst the Republic of Cyprus objects to it. Having been forced to tackle the difficulties of the ongoing stalemate, it would be interesting to see whether the different approaches by the European Court would give rise to a bottom-up pressure for progress at political level.

It is questionable whether in practice *Demopoulos* has provided the yardstick to create a broad framework for agreement between the two sides. Despite paying selective lip service to aspects of *Demopoulos*, as interpreted by the two sides, there are elements in the proposals submitted at the negotiating table by the two sides which run contrary to the reasoning of the case. Whilst conceding in principle that under certain instances users have certain rights, the Greek-Cypriot side rejects (a) the logic of the Court's balancing act which may be interpreted as granting overriding rights to users over the rights of owners and (b) the Court's treatment of

⁶³ For an analysis of the constitutional logic of the Annan Plan see Hoffmeister, 2006; Trimikiniotis 2009.

the rights of owners who were too young to pursue a claim based on the right to a home. The Turkish-Cypriot side, in its proposals to settle the property question, seems to be pushing for provisions that go beyond the logic of *Demopoulos*: (a) aspects of their proposals seem to adopt a global exchange approach; (b) they insist on recognition of 'exchange titles' of Greek-Cypriot properties granted by the regime to Turkish-Cypriots after 1974, and; (c) they insist on the imposition of a ceiling to the right to restitution and propose general measures which would not adequately allow the taking into consideration of the specificities of each individual case, not even the wishes of the Turkish-Cypriot owners.

Another bone of contention is the definition of the 'user'. The Turkish-Cypriot position is that the user is anyone who was allocated Greek-Cypriot properties by the 'TRNC' regime, defined as 'a person who has been granted a form of right to use or occupy an affected property by an authority'. The Greek-Cypriot proposals define the user as 'a person other than the legal owner who is actually using the affected property, prior to the coming into force of the Agreement for the housing and/or support of himself and his family'. The logic of the decision in *Demopoulos* is based on the *real use of property*, which establishes a genuine connection to the land. To overcome the differences the two sides have to proceed to establish a system for the resolution of the property question in a way that focuses on the examination of the specificities of each individual case. Any criteria adopted for 'affected properties' must not undermine the logic of the actual use of property.

3.3 The Republic of Cyprus's legal system as regards the right to property

3.3.1 Cypriot sources of law and legal mechanisms enforcing property-related rights

At the national level, there are three sources of law relating to immovable property: the Constitution, the relevant laws and regulations, and case law. To the last category, one might add the decisions of the National Equality Body, set up and operative within the Ombudsman's Office since 2004, as this body has the power to issue binding decisions, even though it has up until now unfortunately refrained from doing so, preferring to make use of its mediation powers.

As regards national laws, often a distinction is made between two types of sources: *general provisions*,⁶⁴ which are basically legal provisions that carry a general implication affecting, inter alia, the regulation of property aspects; and *specific laws*⁶⁵ and *regulations* referring particularly to property matters. Amongst these, some of the most important sources of property law are the Constitution and the Immovable Property (Tenure, Registration and Valuation) Law.

⁶⁴ General provisions include the Constitution, the Contract Law, Cap. 149, the Civil Procedure Law, Cap. 6 and Rules, the Stamp Law, Cap. 228, the Wills and Succession Law, Cap. 195, the Administration of Estates Law, Cap. 189, the Probates (Re-Sealing) Law, Cap. 192, the Estate Duty Law, Cap. 319 and the Trustees Law, Cap. 193.

⁶⁵ Specific property legislation includes the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, the Sale of Land (Specific Performance) Law, Cap. 232, the Acquisition of Immovable Property (Aliens) Law, Cap. 109, the Immovable Property Transfer and Mortgage Law, No. 9/65, the Immovable Property Tax Law, Cap. 322, the Immovable Property (Towns) Tax Law, No. 89/62, the Capital Gains Tax Law, No. 52/80, the Rent Control Law, No. 23/83.

Cyprus maintains a land registry system in which all immovable property (a term that relates to land and buildings, trees and plantations, rivers, wells, and all rights relating to land and buildings) is registered.

3.3.2 The Constitution

The Constitution contains a general anti-discrimination provision in Article 28 prohibiting discrimination on all grounds; at the same time Article 6 specifically prohibits discrimination against any person on the grounds of belonging to one or the other community.

The right of ownership of immovable property is considered as one of the fundamental human rights under the Constitution. Article 23 of the Constitution provides that every person has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property. Restrictions or limitations may be imposed which are absolutely necessary in the interest of public safety or public health or public morals or town and country planning or the development and utilisation of any property for the promotion of the public benefit or for the protection of the rights of others. This provision further states that just compensation will promptly be paid for any such restrictions or limitations which materially decrease the economic value of such property; in case of disagreement, such compensation will be determined by a civil court.

Article 23 further provides that immovable property may be compulsorily acquired for a purpose which is to the public benefit stating clearly the reasons for such acquisition; and upon the payment in cash and in advance of a just and equitable compensation to be determined, in case of disagreement, by a civil court. The property compulsorily acquired shall only be used for the purpose for which it has been acquired. If within three years from the acquisition such purpose has not been attained, the acquiring authority shall, immediately after the expiration of the said period of three years, offer the property at the price for which it was acquired to the person from whom it was acquired. Such person shall be entitled within three months of the receipt of such offer to signify his acceptance or non-acceptance of the offer, and if s/he signifies acceptance, such property shall be returned to her/him immediately after her/his returning such price within a further period of three months from such acceptance. It has to be pointed out that the general practice of the government is not to return properties after three years; return as a matter of practice occurs only for those who pursue their rights via the courts.

A serious constitutional issue is the provision in the Constitution which prohibits compulsory acquisition of any Church properties, in a country where the Church is the largest landowner. Art. 23.9 and Art. 23.10 of the Constitution provide:

23.9 Notwithstanding anything contained in this Article no deprivation, restriction or limitation of the right provided in paragraph I of this Article in respect of any movable or immovable property belonging to any See, monastery, church or any other ecclesiastical corporation or any right over it or interest therein shall be made except with the written consent of the appropriate ecclesiastical authority being in control of such property and the provisions of paragraphs 3, 4, 7 and 8 of this Article shall be subject to the provisions of this paragraph:

Provided that restrictions or limitations for the purposes of town and country planning under the provisions of paragraph 3 of this Article are exempted from the provisions of this paragraph.

23.10 Notwithstanding anything contained in this Article, no deprivation, restriction or limitation of any right provided in paragraph 1 of this Article in respect of any vakf movable or immovable property, including the objects and subjects of the vakfs and the properties belonging to the Mosques or to any other Moslem religious institutions, or any right there on or interest therein shall be made except with the approval of the Turkish Communal Chamber and subject to the Laws and Principles of Vakfs and the provisions of paragraphs 3, 4, 7 and 8 of this Article shall be subject to the provisions of this paragraph:

Provided that restrictions or limitations for the purposes of town and country planning under the provisions of paragraph 3 of this Article are exempted from the provisions of this paragraph.

Constitutional rights are actionable both against the State and against individuals in the private sector and their violation gives rise to remedies based on the principle of full restitution in the form of damages.⁶⁶

3.3.3 The Immovable Property (Tenure, Registration and Valuation) Law

This law was enacted in 1946, replacing the Ottoman Land Law prevailing until then, and is regarded as the A to Z of immovable property in Cyprus, dealing with all matters concerning the tenure, registration, disposition and valuation of immovable property. Section 40 of the law provides that ownership of immovable property or rights in immovable property can only be acquired by registration at the Land Registry, through the proper procedure described in the law and that such registration may only be affected by the registered owner of the property.

3.3.4 Specific performance

An important feature of Cypriot land law is to be found in the Sale of Land (Specific Performance) Law Cap 232, Article 3(1) of which entitled a purchaser of immovable property to the remedy of specific performance, provided s/he has deposited a duly stamped copy of the contract with the Land Registry within two months of the date of its execution. This means that the buyer can obtain from the Court an order forcing the seller to transfer and register the property to the buyer within a time period which the Court considers reasonable under the circumstances.

The Sale of Land (Specific Performance) Law Cap 232 has since been replaced by the Law on the Sale of Immovable Properties (Specific Performance),⁶⁷ which entered into force on 29.7.2011

⁶⁶ *Yiallourou v. Evgenios Nicolaou*, Supreme Court case, Appeal No. 9331, 08.05.2001.

⁶⁷ In Greek περί Πώλησης Ακινήτων (Ειδική Εκτέλεση) Νόμο 81(Ι) του 2011.

and contains provisions which strengthen the position of the buyer in comparison to the law it replaces, such as the following: (a) extension of deadline deposition of the sales contract with the Lands Office from two months to six months; (b) the possibility under certain preconditions for a contract so deposited to take priority over an existing mortgage; (c) the option of the purchaser to pay the purchase price to the seller's bank /creditor rather than to the seller ; (d) the possibility to assign the contract and to deposit such deed of assignment at the Lands Office.

3.3.5 The anti-discrimination acquis

On the eve of its accession to the EU, Cyprus passed a series of laws in an effort to transpose the anti-discrimination EU Directives.⁶⁸ One of these laws, namely the Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004, enacted on 31.3.2004, prohibits discrimination in access to goods and services including housing, on the ground of race/ethnic origin (article 4(1)). There have been no cases decided by national courts invoking this provision of the law, so we have up until now no definition of the term 'housing' and whether it covers the right to property or the right to a home.⁶⁹

More importantly, in its efforts to harmonize Cypriot legislation with Article 13 of Directive 43/2000/EC, the House of Representatives enacted the Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law⁷⁰ which appointed the Ombudsman⁷¹ as the National Equality Body, granting it powers which go well beyond those of the Ombudsman as well as well beyond the minimum required by the Directive. Thus, the Equality Body is mandated to (i) combat racist and indirectly racist discrimination as well as discrimination forbidden by law and generally discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin;⁷² (ii) promote equality of the enjoyment of rights and freedoms safeguarded by the Cyprus Constitution (Part II) or by one or more of

⁶⁸ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>; and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:EN:HTML>.

⁶⁹ As it will be discussed further below in this paper, in 2007 the Supreme Court examined the request of an applicant to refer to the ECJ the question whether the non-discrimination provision of Council Directive 2000/43/EC can be interpreted in a manner permitting the Cypriot government from denying Turkish-Cypriots the right to sell their properties in the south. The application was rejected on technical grounds but the Court also found that the scope of Directive 2000/43 did not include the issue at stake (access to property): *Perihan Mustafa Korkut or Eyiam Perihan v Apostolos Georgiou* through his attorney Charalambos Zoppos, dated 17.12.2007, Supreme Court Case No. 303/2006.

⁷⁰ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004).

⁷¹ Also commonly referred to as Commissioner for Administration.

⁷² The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 3(1)(a), Part I.

the Conventions ratified by Cyprus and referred to explicitly in the Law⁷³ irrespective of 'race', community, language, colour, religion, political or other beliefs, national or ethnic origin,⁷⁴ and; (iii) promote equality of opportunity irrespective of grounds in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing. The Equality Body is thus empowered to issue binding decisions not only on matters arising under the laws transposing the two EU Directives but also on any matter arising under the Constitution and the international conventions ratified by the Republic. In its seven years of operation, the Equality Body has issued more decisions on racism and discrimination than what the Courts did in the last 40 years, albeit it chooses to issue recommendations rather than binding orders; it has nevertheless made its presence felt and has been the only resort for vulnerable victims of discrimination who cannot deal with the paperwork, technicalities and costs involved in judicial proceedings. Some of the Equality Body's decisions as regards property matters will be dealt with below.⁷⁵

3.3.6 Criminal offences relating to property

In 2006-2007 the Republic of Cyprus attempted to address the problem of the alienation of Greek-Cypriot properties located in northern Cyprus by criminalising their use. Thus, during 2006 the government arrested persons crossing the Green Line in possession of evidence of purchasing or developing Greek-Cypriot property in the area administered by Turkish-Cypriots. On 27.6.2006, the government arrested a Turkish-Cypriot architect found to be in possession of architectural plans for the development of Greek-Cypriot properties in the north. He was charged with intent to commit a crime, illegal possession and use of property and attempt to conceal a crime and was released on bail; he did not return to the area controlled by the Republic in order to face the charges.⁷⁶ On 18.11.2006, the government arrested a Russian couple in possession of a contract for the purchase of Greek-Cypriot property in the north. The wife, whose signature appeared on the documents, was charged under the new law with conspiracy to commit a felony.⁷⁷ To the authors' knowledge, this policy was not used against Turkish-Cypriots using Greek-Cypriot property in the north.

⁷³ These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention Against Torture and Inhuman and Degrading Treatment or Punishment.

⁷⁴ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 3(1)(b), Part I.

⁷⁵ For the latest analysis on the implementation of non-discrimination in Cyprus see Demetriou (2011). This is updated every year, see <http://www.non-discrimination.net/countries/cyprus>. See also Trimikliniotis and Demetriou 2008.

⁷⁶ U.S. Department of State, *Country Report on Human Rights Practices in Cyprus, 2006* Released by the Bureau of Democracy, Human Rights, and Labor on 06.03.2007 (www.state.gov/g/drl/rls/hrrpt/2006/78807.htm)

⁷⁷ U.S. Department of State, *Country Report on Human Rights Practices in Cyprus, 2006* Released by the Bureau of Democracy, Human Rights, and Labor on 06.03.2007 (www.state.gov/g/drl/rls/hrrpt/2006/78807.htm)

On 20.10.2007 the government passed a law making the purchase, rent or sale of property without the consent of the registered owner a felony.

In 2006 a court case was tried indicting a number of Greek-Cypriots (including members of the local municipal authorities) for unlawful sale to third parties of properties belonging to Turkish-Cypriots in the village of Pyrgos Tyllirias in the Paphos District and for unjust enrichment. The penalties imposed carried, inter alia, prison sentences up to three years.⁷⁸

3.4 Turkish-Cypriot properties in the south

3.4.1 The Doctrine of Necessity

In 1963 the Cypriot President Archbishop Makarios proposed 13 amendments to the Constitution, which by and large removed the consociational element from the Constitution by limiting the communal rights of the Turkish-Cypriots. In response, the Turkish-Cypriots withdrew from the administration of the State in protest. Since then, the administration of the Republic has been carried out by the Greek-Cypriots. In July 1964 a law was enacted to provide that the Supreme Court should continue the jurisdiction both of the Supreme Constitutional Court and of the High Court.⁷⁹ In the leading case of *Ibrahim* 1964, the Supreme Court ruled that the functioning of the state must continue on the basis of the “doctrine of necessity”. In his reasoning, Judge Josephides said:

In the light of the principles of the law of necessity as applied in other countries and having regard to the provisions of the Constitution of the Republic of Cyprus... I interpret our Constitution to include the doctrine of necessity in exceptional circumstances which is an implied exception to particular provisions of the Constitution and this to ensure the very existence of the State. The following pre-requisites must be satisfied before the doctrine may become applicable:

- An imperative and inevitable necessity of exceptional circumstances;
- No other remedy can apply;
- The measure taken must be proportionate to the necessity; and
- It must be of a temporary character limited to the duration of the exceptional circumstances.⁸⁰

Admittedly, the absence of Turkish-Cypriots from the administration of the state, irrespective of how it came about, led to a multi-layered crisis that had to be addressed. The Greek-Cypriot judiciary found the doctrine of necessity as the most suitable way to address the crisis of the

⁷⁸ C. Nanos, “Fylakisi mexri tria xronia gia to skandalo tou Pyrgou Tyllirias”, *Politis* (04.10.2006).

⁷⁹ Administration of Justice (Miscellaneous Provisions) Law 33 of 1964.

⁸⁰ *Attorney General of the Republic v Mustafa Ibrahim* (1964) 165 CLR at pp.264-265. See Nedjati (1970); Pikiş 2006, p. 27-40; Constantinou 2008; Trimikliniotis and Demetriou 2008; Trimikliniotis, 2009; 2010.

functioning of the Courts and, ultimately, the functioning of the state itself. A decade later, this doctrine was extended to cover the measures adopted in order to address the situation created by the Turkish invasion. The doctrine of necessity is part of a complex and multiple system, aptly referred to as the 'Cypriot states of exception'⁸¹ which maintain each other at the expense of a normative rights-based constitutionalism.⁸²

3.4.2 Turkish-Cypriot properties and the institution of the 'Guardian'

The primary goals of the government in the aftermath of the 1974 war were the immediate housing and vocational rehabilitation of the Greek-Cypriot displaced population and the recovery of the economy. The properties which the Turkish-Cypriots left behind when they fled or moved to the north of the island between 1963 and 1974 presented an opportunity for the government to address two issues: on the one hand, to assert its authority as the lawful government by protecting these properties from usurpation, and; on the other hand, to make use of these properties to meet the housing and vocational needs of the displaced Greek-Cypriots. Thus in 1975 the Council of Ministers issued a general requisition order for all Turkish-Cypriot properties located in the area under its control, for the purpose of their administration and their utilization, mainly for the benefit of displaced persons. During the same year (1975), a special department was set up within the Ministry of the Interior, namely the Service for the Protection and Administration of Turkish-Cypriot properties, in order to serve the aforesaid goals.

In certain instances building settlements to house displaced persons were erected on Turkish-Cypriot land without proper expropriation procedures; in some of these cases, efforts were made by the state to lawfully acquire the land from its Turkish-Cypriot owners through an amicable settlement. Also, there are several instances where the Guardian of Turkish-Cypriot properties has granted long-term leases to displaced persons residing in Turkish-Cypriot properties; such leases can be registered at the Lands Office.

In the years that followed, the need for legislative regulation of the status of the Turkish-Cypriot properties in the south became obvious, and thus in 1991 a new law set up the institution of the 'Guardian of Turkish-Cypriot Properties' (hereinafter 'the Guardian Law').⁸³ According to Article 7 of this law, the 'Guardian', who is the Minister of the Interior, is mandated to serve the needs of the displaced persons as well as the interests of the Turkish-Cypriot owners. Special regulations governing the criteria for granting the right of use of Turkish-Cypriot properties are approved by the House of Representatives from time to time. The Guardian has delegated part of his mandate to the Director of the Turkish-Cypriot Properties Management Service and to the District Officers in each district. An Advisory Committee, consisting of representatives

⁸¹ See Constantinou 2008 and Trimikliniotis 2010.

⁸² For the notion of 'state of exception', see Schmitt 2005 and Agamben 2005.

⁸³ Law containing Temporary Provisions for the Administration of Turkish-Cypriot Properties in the Republic and other related matters N.139/1991.

of the Guardian, the Ministry of Finance, the Ministry of Agriculture, agricultural organizations, the displaced persons' organization, the organization of SMEs (POVEK) and the parliamentary parties, studies and advises the Guardian on all matters pertaining to the administration of Turkish-Cypriot properties.

The criteria for granting the right to use Turkish-Cypriot properties vary depending on the type of property (housing, agricultural land, professional unit, etc):

- In the case of housing units, these are granted, as a matter of priority, to families where at least one member is a displaced person,⁸⁴ or where the financial situation of the family, its composition, the number of its members and their ages are such that warrant such a grant. Applicants must not own other property of significant value and must not have been granted housing by any other governmental scheme; further, if an applicant or user of Turkish-Cypriot property acquires his/her own house then the license of use of the Turkish-Cypriot property is automatically revoked.
- In the case of Turkish-Cypriot agricultural land, this is granted to displaced farmers or field workers and priority is granted to those displaced farmers or agriculturalists who reside in the area where the land in question is located. A number of other factors are also taken into account for the agricultural land grant; these include the current profession of the applicant, whether the applicant was a farmer before 1974, the farming land the applicant owned in the north, the volume of available Turkish-Cypriot agricultural land in relation to the demand, the financial needs and size of the applicant's family and the degree of non-agricultural activities of the applicant.
- To qualify for the right to use a Turkish-Cypriot professional unit (shop, warehouse, etc.) the applicant must be a displaced person who no longer has his own professional premises and who has no significant property. Other considerations for this entitlement are: the financial situation of the family, its composition, the number of its members and their ages, the need to support the particular professional activity, the property of the applicant in the north, any state assistance extended to the applicant under other schemes.

The license fee is fixed at about 80% of the market price for the property if the licensee is a displaced person and at 100% of the market price if the licensee is not displaced.⁸⁵ No fee is charged for the rental of Turkish-Cypriot housing units leased to displaced persons. Thus, Turkish-Cypriot houses are leased to the displaced persons without rental and the cost of their repair is borne by the government. Turkish-Cypriot shops are rented to displaced persons at about market rental and Turkish-Cypriot agricultural land is provided to displaced farmers at a low rent.

⁸⁴ The term includes persons who are 'displaced due to profession', i.e., persons who had been resident in the north due to his/her profession (policeman, teacher, civil servant, hotel employee, etc.) while his/her home and generally his/her property was in the south. Such a person is considered displaced and is entitled to housing benefits. This right does not extend to his/her children unless the person entitled to it declares that s/he agrees to have such right transferred to one of his/her children.

⁸⁵ http://www.moi.gov.cy/moi/citizenscharter/citizenscharter.nsf/dmlcriteria_gr/dmlcriteria_gr?OpenDocument

Turkish-Cypriot properties which are determined to be beyond the needs or deemed unsuitable for housing, professional or agricultural needs of displaced persons, or are unsuitable for the purpose of economically activating displaced persons, may be leased under exceptional circumstances to displaced municipalities or communities or to residents of areas close to the dividing line between north and south who are not displaced persons but who own a significant section of land which is inaccessible due to the 1974 war, or to persons who have one displaced parent.

The government acknowledges that the use of Turkish-Cypriot properties has made a significant contribution to resolving serious social and economic problems created by the Turkish invasion.⁸⁶

3.4.3 The 2010 amendment to the Guardian Law

An amendment to the Guardian Law in 2010 introduced two significant changes. One of these amendments, found in Article 3, now entitles the Guardian to lift the 'protection'⁸⁷ afforded to Turkish-Cypriot properties after taking into consideration the circumstances of each case and balancing all factors, including whether the Turkish-Cypriot owner or his/her heirs or successors in title occupy property belonging to a Greek-Cypriot in the north. The provision further states that the following factors shall, inter alia, be counted positively towards the reinstatement of the property to its owner:

- (a) When the property came under the control of the Guardian, the owner had his/her habitual residence abroad where s/he had travelled to at any time before or after the Turkish invasion of 1974 and the said owner continues to reside there or has returned or is due to return from abroad for permanent settlement in the areas controlled by the Republic;
- (b) After the property came under the control of the Guardian, the Turkish-Cypriot owner settled permanently in the south and continues to reside there uninterruptedly;
- (c) The property was the owner's residence prior to the Turkish invasion and the owner intends to use it again as his/her residence and to settle in the Republic-controlled areas.

The wording of the law is such that these criteria are not exhaustive, vesting the Guardian with wide discretion to allow or not the return of a property to its Turkish-Cypriot owner. Greek-Cypriot policy makers seem to be anxious to prevent situations where Turkish-Cypriots residing in Greek-Cypriot properties in the north are claiming the properties they abandoned in the south within which Greek-Cypriot displaced persons may reside. At the same time, someone may read into these criteria some loosely interpreted 'allegiance' to the Republic of Cyprus by choosing it as the place of their permanent residence. Therefore any decision of the Guardian

⁸⁶ <http://www.cyprus.gov.cy/portal/portal.nsf/All/241107A0AAF2191FC2257036003C9043?OpenDocument>

⁸⁷ The phrase used in the law is 'to lift the administration': Article 2 of Law N.39(I)/2010.

to return a property to its Turkish-Cypriot owner beyond the aforesaid criteria will probably have to be within the spirit of the lawmaker (i.e., contain an element of 'allegiance' to the Republic) in order to be accepted by the Court. This is illustrated by the case described below.

In *Ijlal Ahmet Zeki Mustafa v The Republic of Cyprus*⁸⁸ the applicant was a Turkish-Cypriot permanent resident of Australia who had inherited the property from her father. The property had been left behind by her father when he fled his village in 1974 and thus came under the control of the Guardian, who granted a license of use of this property to a displaced Greek-Cypriot. The applicant tried to sell this property, but the Guardian declined her request for permission to sell. The applicant then applied to the Supreme Court to annul this Guardian's negative decision. In examining this application the Court found that the case does not meet the criteria set by the 2010 amendment of the Guardian Law, ignoring the fact that the criteria were not intended to be exclusive but merely indicative. The Court focused on the fact that the property in question was passed on to the applicant in 1992, i.e., after the Turkish invasion, and that the applicant's deceased father had settled in the village of Trikomo, which was under the control of the Turkish army. Although not expressed in so many words, the Court found that the circumstances of the case were such that the applicant did not demonstrate elements evidencing 'allegiance' to the Republic (by choosing to settle in the Republic-controlled area, for instance).

In effect, the treatment of these cases by the authorities and by the Courts points to the direction that although the right to reside in one's home will be respected, all other rights derived from the ownership of a property, such as the right of access, the right to sell or rent, the right to receive compensation when expropriated, are suspended until "resolution of the Cyprus problem". What this essentially means is that the law is putting into effect a political decision to hold Turkish-Cypriot properties hostage to be used as a bargaining tool in a future settlement of the Cyprus problem, whilst at the same time using these properties to meet the needs of the persons displaced by the Turkish invasion.

The other new provision introduced by the 2010 amendment to the Guardian Law was that if the implementation of any provision of this law results in the violation of any rights arising under the European Convention on the Protection of Human Rights and Fundamental Freedoms or under any of its Protocols ratified by the Republic, then the person aggrieved can sue the Republic and the Guardian at the District Court, claiming compensation for monetary or other loss, costs and expenditure suffered as a result of the violation and/or demanding the issue of a binding Court order recognizing his/her rights. In the event that the person aggrieved demands a Court order for the restitution of his/her property which is under the custody of the Guardian, then the action must also go against the person who lawfully occupies this property. In examining such a claim, the Court must take into account the considerations raised by the ECtHR based on ECtHR case law.

⁸⁸ Case No. 688/2009, judgment delivered on 09.06.2011.

3.4.4 The landmark case of Arif Mustafa

The case that paved the way for the recognition of the right to reside in one's home was the landmark decision in *Arif Mustafa*.⁸⁹ In 2004, the application of Turkish-Cypriot Arif Mustafa to the Supreme Court of the Republic for reinstatement of his property in the south was at the centre of public debates. The applicant had been forced to abandon his property in 1974 as part of the forceful movement of population carried out at the time. Since then, his property had been under the control of the Guardian. In 2003 when the restrictions to the freedom of movement were partially lifted, the applicant moved to the south and, while residing in rented accommodation, applied to the Guardian for reinstatement of his property. His application was rejected invoking the Guardian law. The applicant then filed an application to the Supreme Court⁹⁰ to reverse the Minister's decision. His application was successful and the Court ordered the reinstatement of his property. In deciding in favour of the applicant, the judge stated, *inter alia*, that the purpose of the law, which vested the Interior Minister with the power to administer Turkish-Cypriot properties, was to protect these properties in the owner's absence and not to retaliate to the Turkish army occupation of Greek-Cypriot properties in the north, which would constitute violation of Article 6⁹¹ of the Cypriot Constitution. The Attorney General immediately filed an objection and obtained an interim order suspending execution of the Supreme Court order, pending the examination of his objection. In the period that ensued, the authorities made efforts to reach an amicable settlement with the applicant, offering him alternative accommodation or compensation in lieu of the property, in the hope that they could avoid a legal precedent that would pave the way for more Turkish-Cypriots to claim their properties in the south. Such a development could well prove a financial as well as a political disaster for the government, as most of these properties are used either by the government itself or by Greek-Cypriot refugees.⁹²

Finally, when all efforts failed, on 13.02.2006 the Attorney General withdrew his objection and the judgment was executed: on 14.02.2006 Arif Mustafa was given possession of his house. The objections lodged by the Greek-Cypriots residing in Mustafa's house were also withdrawn on the same day. In an effort to discourage other Turkish-Cypriots from applying for reinstatement of their properties, the Attorney General made a public statement that the Supreme Court's decision in favour of Arif Mustafa is not binding on the government and that each case would be examined upon its own facts.⁹³

⁸⁹ Supreme Court of Cyprus Case no.125/2004.

⁹⁰ Article 146 of the Cyprus Constitution entitles all persons to file applications to the Supreme Court to repeal administrative acts.

⁹¹ Article 6 of the Constitution reads: "Subject to the express provisions of this Constitution, no law or decision of the House of Representatives or of any of the Communal Chambers, and no act or decision of any organ, authority or person in the Republic exercising executive power or administrative functions, shall discriminate against any of the two Communities or any person by virtue of being a member of a Community."

⁹² G. Psyllides, "Mustafa considers next move", *The Cyprus Mail* (12.10.2004), p. 5.

⁹³ Y. Nearchou, "Me to kleidi sto heri paei sto spiti tou stin Episkopi", *Politis* (14.02.2006), p. 20.

3.4.5. Applications to the ECtHR in relation to Turkish-Cypriot properties

The institution of the 'Custodian' of Turkish-Cypriot properties and the applicability of article 14 of the ECHR⁹⁴ on the issue of Turkish-Cypriot properties located in the Republic-controlled south of Cyprus will inevitably be considered by the ECtHR, as more and more Turkish-Cypriot property owners are applying to the ECtHR for having been denied access to their properties by the Cypriot government. In 2010 the ECtHR considered the application of *Sofi* who owned property in Larnaca from which she fled in 1963, when hostilities broke out between Greek-Cypriots and Turkish-Cypriots. The applicant and her family sought refuge from the hostilities in an enclave populated by Turkish-Cypriots. In 2003 the applicant applied to the Ministry of Interior seeking recovery of possession of her house, informing the Ministry that she intended to move back to her house in Larnaca. The Ministry replied that the relevant properties had been vested in the Custodian of Turkish-Cypriot properties and that a family of displaced persons of Greek-Cypriot origin from the northern part of Cyprus was living in them. The applicant applied to the ECtHR complaining that she had been denied access to and enjoyment of her immovable property in Cyprus, which disclosed inter alia a violation of Article 14 in that she had been discriminated against as a Turkish-Cypriot. Before the Court delivering its judgement, the Cypriot government submitted an offer for a friendly settlement, which was accepted by the applicant. The offer involved satisfaction of the applicant's claim for vacant possession of her property from January 2009, compensation for loss of use at €427,150.36, compensation for non-pecuniary loss at €59,801.06 and legal costs at €50,000. The ECtHR accepted the friendly settlement, "satisfied that the settlement is based on respect for human rights."⁹⁵ The issue of whether all domestic measures had been exhausted prior to the application to the ECtHR was not considered, given that the case was effectively settled before trial.

In the group application of *Kazali et al v. Cyprus* which, at the time of writing, was pending before the ECtHR, a total of 27 Turkish-Cypriot property owners were suing the Cypriot government for denial of access to their properties, alleging inter alia, violation of article 14 of the ECHR.⁹⁶ If the case goes to trial, then the ECtHR is likely to consider the question whether the applicants have exhausted or not all domestic means, particularly in light of the fact that a positive outcome in this case is likely to encourage several thousands of Turkish Cypriots owning properties in the south to apply to the ECtHR seeking reinstatement. In the case that the ECtHR is flooded with Turkish Cypriot applications, it is likely to rule that the Cypriot government must establish an effective domestic mechanism to deal with Turkish Cypriot

⁹⁴ See section 3.2.1 above.

⁹⁵ Application no. 18163/04 by Nezire Ahmet Adnan SOFI against Cyprus <http://cmiskp.kazali.et.al.v.cyprus.p.echr.coe.int/tpk197/view.asp?action=html&documentId=862144&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

⁹⁶ <http://cmiskp.echr.coe.int/tpk197/view.asp?action=html&documentId=852064&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

claims, in a similar fashion as it did in the case of *Demopoulos*. The national courts of the Republic of Cyprus can hardly be viewed by the ECtHR as an effective domestic remedy, given the fact that they invariably apply the Guardian law which does not guarantee restitution nor does it foresee compensation. This possible development needs to be considered in juxtaposition with the fact that the institution of the 'Guardian of Turkish-Cypriot Properties' has already been legally undermined by the case of *Tymvios*.

Whether the Turkish Cypriot claims are examined by the ECtHR or by a domestic mechanism set up by the Republic, the end result will be that the Cypriot government will eventually have to face the fact that Turkish Cypriot properties in the south cannot be indefinitely held hostage to the Cyprus problem. The economic burden of having to compensate the owners of all Turkish-Cypriot properties in the south may well become difficult for the Republic to bear in the midst of the economic crisis.

3.4.6. Case law and Ombudsman decisions in the post-2004 period

In 2006 the Ombudsman examined two complaints⁹⁷ submitted on behalf of Turkish-Cypriots against the Guardian alleging that the Ministry refused to supply them with information regarding the fate of their properties in the south. In particular, the complainants requested information about when and why their properties were expropriated and the amount of compensation due to them, in response to which the Ministry offered information on the legislative framework regarding the guardianship of all Turkish-Cypriot properties in the south and the powers this affords the Guardian. The Ombudsman criticised this practice and urged the Ministry to provide the information requested, for the sake of clarity and since there was nothing to hide.⁹⁸

A further problematic aspect of the practical application of the 'doctrine of necessity' is the fact that, in practice, Turkish has ceased to be used as an official language since 1963, as the relevant provisions in the Constitution requiring the use of both languages in all legislative, executive and administrative acts⁹⁹ ceased to be implemented. Instead, Greek is the only language used by the State in official documents, including laws, Ministerial decisions and the official *Gazette*. This means that official publications in the *Gazette* regarding the expropriation of Turkish-Cypriot properties are available only in Greek, thus essentially denying the Turkish-Cypriots the right to oppose the said expropriation within the strict timeline foreseen.

The unique legal regime governing Turkish-Cypriot properties in the Republic-controlled area has been at the centre of a number of Supreme Court decisions mainly handed down in

⁹⁷ A/P 332/2005 (24.02.2006); A/P 333/2005 (24.02.2006).

⁹⁸ Brief note submitted by the Ombudswoman to the Council of Ministers regarding the Reports submitted for the month of February 2006, File No. E.D.50.3.01.17.

⁹⁹ Article 3 of the Constitution.

2007, all of which resorted to the doctrine of necessity to justify the differential treatment of Turkish-Cypriots in this area. Below is an overview of such cases.

In the case of Kiamil Ali Riza,¹⁰⁰ a Turkish-Cypriot claimed his property situated in the south which had been deemed 'abandoned' when Turkish-Cypriots moved to the north and thus had been placed under the control of the Guardian. The appellant argued that the Guardian law is unconstitutional and in violation of the equality principle and that the expropriation of his property carried out by the authorities was illegal. The court rejected his claim, stating that the lifting on the ban of freedom of movement in 2003 did not mean that the property is 'no longer abandoned'; that the cessation of 'the abnormal situation' leading to the placing of all Turkish-Cypriot properties under the control of the "Guardian" is decided by the Council of Ministers and that due to the 1974 war the state legitimately invoked emergency measures relying on the 'doctrine of necessity'. The decision contradicts the principle established by the ECtHR in the case of *Aziz*,¹⁰¹ which ruled that the doctrine of necessity cannot override fundamental rights. The decision also runs contrary to the principle established in the case of *Arif Mustafa* (above), which was that the purpose of the Guardian Law was to protect the properties in the owner's absence and not to retaliate for the Turkish occupation of Greek-Cypriot properties in the north, which would constitute violation of Article 6 of the Constitution.¹⁰²

The fact that the matter receives an overtly political treatment by the Courts becomes evident in the case of *Ahmet Mulla Suleyman*¹⁰³ where the applicant's arguments went directly to the core of the matter: he argued that the doctrine of necessity cannot impose arbitrary restrictions such as those imposed by the Guardian Law; that the Guardian Law violates Article 28 of the Constitution, as it generates unlawful discrimination towards Turkish-Cypriots and that it runs contrary to Articles 6, 13 and 23 of the Constitution¹⁰⁴ and also runs contrary to Article 1 of the First Protocol to the ECHR, also pointing out that the ECtHR in the case of *Aziz* had stressed that the law of necessity cannot violate human rights. The Court rejected this position with general references to the Turkish invasion and occupation and to the need to take measures to protect the abandoned properties, on the one hand, and to help the

¹⁰⁰ Kiamil Ali, beneficiary of the legacy of Kiamil Ali Riza alias Kiamil Ali Riza Karamano, alias Ilhan Ali Riza in his capacity as an employee of the Morphou Properties Administration Department v. Interior Minister in his capacity as Guardian for the Protection of Turkish-Cypriot Properties, Supreme Court case no.133/2005 (19.01.2007)

¹⁰¹ *Ibrahim Aziz v Cyprus*, accessible at <http://www.echr.coe.int/Eng/Press/2004/June/ChamberJudgmentAzizvCyprus220604.htm>,

¹⁰² Article 6 of the Cypriot Constitution prohibits discrimination on the grounds of belonging to one of the two communities of Cyprus, the Greek and the Turkish.

¹⁰³ Ahmet Mulla Suleyman through his representative Sabiha Ahmet Suleyman v. Republic of Cyprus, Case No. 99/2005, dated 21.05.2007.

¹⁰⁴ Article 6 of the Constitution prohibits discrimination against any of the two Communities or any person as a person or by virtue of being a member of a Community. Article 13 guarantees the right to move freely throughout the territory of the Republic and to reside in any part of it subject to any restrictions imposed by law and which are necessary only for the purposes of defence or public health or provided as punishment imposed by the court. Article 23 guarantees the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such right.

thousands of displaced Greek-Cypriots on the other hand. The judge further stated that the Guardian Law does not pose arbitrary restrictions but only those necessary under the circumstances, which are temporary in nature. He added that this case falls within the exceptions to Article 1 of the First Protocol to the ECHR (i.e., property that must be set aside for reasons of public interest), as this provision does not reduce the right of the State to impose such laws which it considers necessary for the control of the use of property in accordance with public interest. The Court expressed its disagreement over the general approach in the case of Arif Mustafa.

In the case of *Zehra Kemal Ahmet*¹⁰⁵ the applicants were Turkish-Cypriots claiming their property situated in the Republic-controlled areas, arguing that they do not fall under the Guardian Law¹⁰⁶ provisions since they did not abandon these properties as a result of mass movement of population but because they feared for their lives. The judge rejected this argument and the entire application, stating that the reason for their movement was the Turkish invasion and further added, quoting previous case law on the matter,¹⁰⁷ that the Guardian Law is not based only on the absence of freedom of movement and the need to protect the abandoned properties but also on meeting the housing needs of Greek-Cypriot displaced persons; that the right to property as enshrined in Article 23 of the Constitution is not violated by the Guardian law, due to the doctrine of necessity; and that the measure of placing all Turkish-Cypriot properties under the administration of the Guardian for a period of time until resolution of the Cyprus problem was "absolutely necessary and proportionate to the situation that had to be addressed".¹⁰⁸

In 2007 the Supreme Court examined the request of an applicant to refer to the ECJ the question whether Article 2 of Council Directive 2000/43/EC¹⁰⁹ can be interpreted in a manner permitting an EU member state to deny some of its citizens the right to sell their properties. The Directive in question prohibits direct or indirect discrimination based on racial or ethnic origin. The applicant was a Turkish-Cypriot claiming the right to sell her property located in the Republic-controlled area, which had been placed in the custody of the Guardian. The request for referral to the ECJ was rejected on the grounds of abuse of process, since the appellant had filed and subsequently withdrawn two similar applications in 2005 and 2007 respectively. The Court also found that the scope of Directive 2000/43 did not include the issue

¹⁰⁵ *Zehra Kemal Ahmet and Nuray Kemal Ahmet v. The Republic of Cyprus through the Interior Minister as Guardian of Turkish-Cypriot Properties*, Supreme Court Case No. 1011/2004 (08.06.2007).

¹⁰⁶ Law No. 139/1991. In the preamble the law states: "Because, as a result of the mass movement of Turkish-Cypriot population due to the Turkish invasion in the areas occupied by the Turkish invading forces and the prohibition by these forces of the movement of this population to the areas of the Cyprus Republic, movable and immovable properties were abandoned".

¹⁰⁷ *Ahmet Mulla Suleyman v. The Republic*, Case No. 99/2005 (dated 21.05.2007).

¹⁰⁸ This decision, as well as all other decisions issued in 2007 on the question of Turkish-Cypriot properties, appears to be a departure from the principle established in the case of *Ibrahim Aziz v. The Republic of Cyprus ECtHR* <http://www.echr.coe.int/Eng/Press/2004/June/ChamberJudgmentAzizvCyprus220604.htm>, which ruled that the doctrine of necessity cannot override fundamental rights.

¹⁰⁹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>

at stake, which was access to property. In describing the scope of the Directive, the Court mentioned only 'conditions for access to employment, working conditions, social protection including social security and social advantages'. The Court used its discretion to reject the request for referral to the ECJ on technical grounds but also went a step further to find that the scope of the Directive does not include rights pertaining to property, such as the right to sell one's property. The right not to be discriminated against in the field of housing was not considered by the Court as relevant, even though a more liberal approach could perhaps have found that housing, covered by Article 3(1) of the Directive, includes the rights of ownership deriving from the right to housing.¹¹⁰

In *Mehmet Ahmet v the Republic of Cyprus*,¹¹¹ concerning the administration of an estate belonging to a deceased Turkish-Cypriot, the Guardian¹¹² rejected a request to sell and divide the proceeds of the sale to the heirs.¹¹³ Counsel for the plaintiff argued that the Guardian had no *locus standi* and that Law 139/1991 providing for the administration of Turkish-Cypriot properties by the Guardian is incompatible with EU law. The trial Court refused the claim and also ruled that section 33 of Law 139/1991 does not apply to cases where the administrator of an estate is empowered to proceed with the allocation of the property but is unable to do so as a result of an estoppel. An appeal to the Supreme Court for permission to submit a preliminary question to the ECJ about the legality of the Guardian law was dismissed. The Supreme Court rejected the argument on *locus standi* and secondly, it noted that as the appellant did not appeal against the trial Court findings on the provisions of section 33, whatever the ruling of the ECJ, the trial Court decision would still stand.

In 2010 the National Equality Body dealt with discrimination against Turkish-Cypriots as regards the procedure of acquiring property. On 25.08.2010 the Equality Body issued a decision¹¹⁴ pursuant to a complaint from a Turkish-Cypriot and from the current authors claiming that the provisions of the property law¹¹⁵ are discriminatory against Turkish-Cypriots. The preamble to this law explains that this law became necessary due to "the circumstances created following the events of 21.12.1963", the date which marked the start of the inter-communal strife. The law effectively vests the Director of the Land Registry with discretion to decide as to

¹¹⁰ *Perihan Mustafa Korkut or Eyiam Perihan v. Apostolos Georgiou through his attorney Charalambos Zoppos*, dated 17.12.2007, Supreme Court Case No. 303/2006.

¹¹¹ Civil Case no. 277/2006 (13.01.2009).

¹¹² Based on sections 33, 53, 55 and 58 of the Law on Administration of Estates, Cap. 189, the relevant Regulations and sections 2, 3, 5, 6(a) and 6(y) of the Law on Turkish-Cypriot Properties (Administration and Other Subjects) (Temporary Provisions) 139/1991.

¹¹³ Based on sections 31, 32, 33, 51 and 53(1)(σ) of the *Law on Administration of Estates, Cap. 189*.

¹¹⁴ Reference No. AKR 6/2009, AKR 23/2010.

¹¹⁵ Immovable Property (Temporary Provisions) Law N. 49/1970.

whether a person is to be allowed to acquire land: the Director is thus given power to “exercise his/her judgement on the basis of the facts submitted by the Interior Minister whether the intended acquisition of the land by the intended beneficiary may put in danger or in any way affect public security”. If the Director deems that this is the case, he can deny the transfer of the property, unless approval is given by the Interior Minister. In practice this provision has been activated only in the cases of Turkish-Cypriots attempting to acquire or sell land. The procedure applies to Turkish-Cypriot properties which were not considered ‘abandoned’ by Turkish-Cypriots, as for the latter cases a different regime comes into operation which places these properties under the Guardianship of the Interior Minister in his capacity as Guardian.¹¹⁶ The complaint alleged that the procedure of approval of property transactions by the Interior Minister poses a number of problems amounting to violations of national and European law, namely: Article 23 of the Constitution (right to property), Article 1 of Protocol 1 of the European Convention of Human Rights, the right to property as stipulated in the *acquis* and the doctrine of separation of powers, since it is left to the executive to decide on a fundamental human rights issue which has no relation to any notion of ‘security’, ‘necessity’, etc. Both complainants argued that the procedure for approval by the Interior Minister of the act of transfer of the property results in discriminatory treatment against Turkish-Cypriots on the grounds of their ethnic origin. The Equality Body found that the procedure of approval by the Interior Minister of the property transfers to or from Turkish-Cypriots amounts to a restriction of the right to property because the completion of the transaction depends on the approval of a third party (the Interior Minister) and is not exclusively dependent upon the will of the contracting parties. The report notes that the procedure applies only when Turkish-Cypriots are involved, which is *prima facie* discriminatory, since individual cases are given different treatment by the law depending on the ethnic origin of the persons involved. The report states that the restriction would have been acceptable had it been objectively and reasonably justified and serving a legitimate aim, which was not the case here; it could not reasonably be claimed that every single property transaction with Turkish-Cypriots involves security and public order issues. The report concluded that the implementation of Law 49/1970 has in practice resulted in discriminatory treatment that cannot be justified and therefore calls on the authorities to review the question of applying the provisions of Law 49/1970 to all transfers to and from Turkish-Cypriots.¹¹⁷

¹¹⁶ Law on Turkish-Cypriot Properties N. 139/1991.

¹¹⁷ The equality body's report is available in Greek at [http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/C84A0549BFC0CBCC22577A6002678EE/\\$file/AK.P6.2010-23.2010-25082010.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/Ombudsman.nsf/All/C84A0549BFC0CBCC22577A6002678EE/$file/AK.P6.2010-23.2010-25082010.doc?OpenElement)

4. CONCLUSION

The legal aspect of displacement is amongst the most complicated of all facets of the Cyprus problem. This is made more difficult by the fact that displacement is in itself a contentious subject, tied as it is to property relations and rights. It is also a very emotionally charged issue. The concepts of *displacement* and *property* are not confined to property relations or the so-called 'property question', which merely aims at sorting out the property ownership by addressing questions around ownership and the rights to the land. It is essential that the rights to land are properly addressed for a settlement to the Cyprus problem. Beneath what is often defined as the 'official positions', there are assumptions about aggregated and essentialised notions of the two major ethnic communities as if they are homogenous, unified and all in agreement, which need to be clarified. It has often been misguidedly assumed that there is a zero-sum game between the Greek-Cypriot position and the Turkish-Cypriot position; however, there is a much more complex and fluid political, legal, social, economic and cultural reality.

In addressing the legal aspects of a rights-based regime, one would need to de-construct what is assumed to be the 'ethnicised position' of each side. In other words, here we must stop assuming that there is an *automatic ethnic common denominator*. In this way, we will be able to understand the complexity of the matters at stake and then be able to propose formulas to resolve the conflict. This is far a more interesting, effective and constructive approach, which would reconstruct the notions of property relations, social relations on the basis of the universal, communal, group/collective, individual rights. This is the broad framework within which we can read and understand the property settlement in Cyprus. Human rights must be properly located within the context of social relations and as such they must be decoupled from any ethnic or national ideology.

Policies of a temporary nature and longer term measures adopted to relieve displaced persons, to make their lives more tolerable, to resettle them, pending the solution or in the absence of a solution are often contradictory. The policy approaches adopted by each side are very different, depending on the specific historic moment to which we are referring. The reality of displacement needs a longer term and multi-dimensional view that goes back to the late fifties and extends to the present. The displacement of the late 1950s was a result of the conflict; displacement and forced migration in the sixties and seventies are all interconnected stories. A crucial innovation of the project, of which this study forms part, is that in order to understand the full story of the displacement, one needs to have a multi-perspective and longer term view

of matters. At the different times of displacement, those in charge of devising policies in response to displacement perceived this essentially as *crisis management*: seeking quick, effective and urgent solutions to deal with the temporary need, until a longer term solution could be found. Of course the policies adopted by each side were very much based on their own perspective, political priorities, ideologies and socio-economic capacities. The outline of the perspectives of the two sides shows *what the problem was about, how they view the resolution in terms of what they wanted to achieve and what they expect to be the outcome of any resolution*. As we all know by now, the problem has lasted far longer than it was originally expected and the continuation of the status quo is proving to be much more resilient and at the same time replete with new problems, issues and knock-on effects.

This is why the legal and the social reality cannot be assumed to be frozen in time; it is in constant evolution, often contradictory. Regulating the issue of displacement involves dealing with the massive and very diverse bodies of policies, law and regulations. This is interconnected to all social and economic aspects of integrating masses of people into the society, rebuilding or building communities anew and developing networks, systems and social assistance regimes. This is a very difficult and contradictory process and often generates unintended consequences.

This study has dealt with the legal aspects of displacement in the Republic of Cyprus which involve two broad policy areas: (a) the legal and policy regime dealing with Greek-Cypriot displaced persons following the war of 1974 and (b) the legal issues relating to the properties of displaced persons, Greek-Cypriots and Turkish-Cypriots, as regards questions of ownership and the rights to the land as provided by the laws in the Republic of Cyprus. Obviously, such policies are very much entangled with the Cyprus problem and the fact that the Republic of Cyprus has been administered by the Greek-Cypriots since 1964; this very issue is addressed in the study, which outlines the problems with this reality. The study has also addressed the integration of the Cypriot legal order within the legal orders of the EU and the ECHR with the exclusion of the northern part of Cyprus, where the EU acquis is suspended.

The study illustrates the complexities of trying to resolve the displacement in the absence of a comprehensive settlement, and how the temporary solutions sought are very much tainted by the Cyprus problem and the responses of political actors and policy makers.

It is beyond the scope of this study to outline the broader political context as regards the displacement and property chapter in the current negotiations. However, it is possible to give some pointers as to the resolution of the displacement and property issues within a broader settlement of the problem. Solutions to the displacement and property issues, if there is a political will, can be found on the basis of the following:

First, we have to learn from the past and learn from other experiences. Learning is a very important part of the process. This requires that we disaggregate ethnic collective attributes and assumptions and examine more closely what the actual situation is on the ground.

Secondly, there are the inter-connections between different chapters of the Cyprus problem, which can assist in the process of reaching an agreement. For instance, the property question is obviously connected to the territorial question; as such the two must be discussed together.

Third, we need to address the fundamental needs of the people through legal and policy instruments. The outer premises of the agreements are actually there; the point is to find the right balance of rights between the owner and the user of land.

And, last but not least, a property settlement that is practical and solutions that are mutually agreeable, must be part of the wider vision for a federal reunification of the country which will be sustainable and lasting.

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