



## Cyprus v. Turkey

Application No. 25781/94; (2002) 35 EHRR 30; [2001] ECHR 327

**Country:** Turkey

**Region:** Europe

**Year:** 2001

**Court:** European Court of Human Rights European Court of Human Rights

**Human Rights:** Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Freedom of association, Freedom of expression, Freedom of movement and residence, Freedom of religion, Right to due process/fair trial, Right to family life, Right to health, Right to life, Right to privacy, Right to property, Rights to the benefits of culture

### Facts

Cyprus lodged an application against Turkey for alleged violations of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") which occurred during and after the Turkish military operations in Cyprus in 1974 and the subsequent 1983 establishment of the "Turkish Republic of Northern Cyprus" ("TRNC").

Cyprus alleged that Turkey was responsible for continuing violations and other violations of "Articles 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 13, 14, 17 and 18 of the Convention and of Articles 1 and 2 of Protocol No. 1. These allegations were invoked with reference to four broad categories of complaints: alleged violations of the rights of Greek-Cypriot missing persons and their relatives; alleged violations of the home and property rights of displaced persons; alleged violations of the rights of enclaved Greek Cypriots in northern Cyprus; alleged violations of the rights of Turkish Cypriots and the Gypsy community in northern Cyprus."

The Court, at the admissibility stage of the proceedings, considered objections under the following headings: (1) alleged lack of jurisdiction and responsibility of the respondent State (Turkey) in respect of the acts complained of; (2) alleged identity of the present application with the previous applications introduced by the applicant Government (Cyprus); (3) alleged abuse of process by the applicant Government; (4) alleged special agreement between the respective Governments to settle the dispute by means of other international procedures; (5) alleged failure of aggrieved persons concerned by the application to exhaust domestic remedies; and (6) alleged failure by the applicant Government to comply with the six-month rule. The Court found that the allegations were admissible.

### Decision and Reasoning

Alleged violations of the rights of Greek-Cypriot missing persons and their relatives

Noting that the European Commission of Human Rights (the "Commission") was unable to establish whether any of the missing persons were killed in circumstances for which the respondent State can be held responsible, the Court concluded that facts did not disclose a substantive violation of Article 2 of the Convention in respect of any of the missing persons. The Court refused to speculate as to fate of missing persons and "limited its inquiry to ascertaining the extent, if any, to which the authorities of the respondent State have clarified the fate or whereabouts of the missing persons." The Court thus examined the allegations in the context of a State's procedural obligation under Article 2 to protect the right to life and held that, "upon proof of an arguable claim that an individual, who was last seen in the custody of agents of the State, subsequently disappeared in a context which may be considered life-threatening," the State had a continuing obligation under Article 2 of the Convention to investigate the circumstances surrounding the disappearances. The Court therefore concluded that there had been "a continuing violation of Article 2 on account of the failure of the authorities of the respondent State to conduct an effective investigation aimed at clarifying the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances."

The Court further held that, under Article 5 of the Convention, the respondent State had an obligation to conduct a prompt and effective investigation into an arguable claim that a person has been taken into custody and has not been seen since. Thus, the respondent state had breached Article 5 of the Convention

in failing to conduct such investigation into the fate of the missing Greek-Cypriot persons.

The Court considered the existence of special factors which gave the suffering of the family members of the missing persons a dimension and character additional to the emotional distress is inevitably caused to relatives of a victim of a serious human-rights violation, namely the long passage of time in which the respondent State failed to investigate the circumstances surrounding the fate of the missing people and the inability of the family members to seek such information. The Court thus held that the continuing suffering of the families of the missing persons constituted a violation of Article 3 of the Convention.

Alleged violations of the rights of displaced persons to respect for their home and property

Considering the Commission's findings that persons were prevented from returning to or visiting their previous homes in northern Cyprus, the Court held that there had been a continuing violation of Article 8 of the Convention, regardless of the respondent government's view that the claim of Greek-Cypriot displaced persons to return had to be solved in the overall context of the inter-communal talks.

Considering the evidence that the TRNC authorities did not recognize any ownership rights of Greek Cypriots in respect of their properties in northern Cyprus, the Court held that there had been a violation of Article 1 of Protocol No. 1 of the Convention, in that displaced persons were prevented from using, selling, bequeathing, mortgaging, developing and enjoying their properties and that no compensation has been paid to the displaced persons for such interferences.

Considering that no provision was made to allow the displaced persons to contest their exclusion from northern Cyprus, the Court held that the displaced persons had no remedies to contest interferences with their Convention rights and thus there had been a violation of Article 13 of the Convention.

Alleged violations arising out of the living conditions of Greek Cypriots in northern Cyprus

Considering there was no evidence that the TRNC authorities deliberately withheld medical treatment, prevented Greek-Cypriot populations from availing themselves of medical services or deliberately delayed patient requests to receive medical treatments in southern Cyprus, the Court found there was no violation of Article 2 of the Convention by virtue of an alleged practice of denying access to medical services to Greek Cypriots and Maronites in northern Cyprus.

Considering that no evidence that members of the enclaved Greek-Cypriot population had been detained by TRNC authorities, the Court found that there had been no violation of Article 5 of the Convention.

Considering that Greek Cypriots living in the north had successfully taken court action to defend their property rights, that certain matters which were not amenable to challenge in the courts were better addressed from the standpoint of remedies within the meaning of Article 13 of the Convention and that, despite the questionable legality of the TRNC court system to begin with, the court found that there was a functioning TRNC court system and no violation of Article 6 of the Convention had occurred.

Considering that the restrictions placed on the freedom of movement of the Greek Cypriots living in the north "considerably curtailed their ability to observe their religious beliefs", the Court found that there had been violation of Article 9 of the Convention.

Considering that the Turkish-Cypriot authorities had "censored or rejected the distribution of a considerable number of school-books on the ground that their content was capable of fostering hostility between the ethnic communities in northern Cyprus," the Court found that there had been a violation of Article 10 of the Convention.

The Court found that there was no restriction of the right to the Karpas Greek-Cypriots to join or take part in activities of associations, and therefore no violation of Article 11 of the Convention.

Considering that Greek Cypriots who had resettled in the south were no longer considered the legal owners of their northern properties and that such property might be considered abandoned under TRNC rules and that inheritance rights of persons living in the south were not recognized, the Court held that Article 1 of Protocol No. 1 of the Convention had been violated.

Considering that secondary educational facilities in Greek had been abolished by the Turkish Cypriot authorities, the Court found that there had been a denial of the substance of the right to education and a

violation of Article 2 of Protocol No. 1 of the Convention.

#### Examination of the living conditions of Greek Cypriots in northern Cyprus

Considering that the restrictions imposed by the TRNC authorities on the freedom of movement of Greek Cypriots to the south gravely interfered with the Greek Cypriot's right to family life, that their movement within the Karpas region was subject to measures of strict control and that the community was monitored in respect of its contacts and movements, the Court found a violation of Article 8 of the Convention had occurred.

Considering that all interferences concerned exclusively Greek Cypriots living in north Cyprus and were imposed on them for the very reason that they belonged to this class of persons, the Court found that Article 3 of the Convention had been violated.

Considering that there was no administrative practice of the TRNC authorities condoning acts of criminality against the homes and property of the enclaved Greek-Cypriot population, the Court found there had been no violation of Article 13 of the Convention with respect to interferences by private persons with the rights of Greek Cypriots living in northern Cyprus.

#### Violations in respect of rights of Turkish Cypriots, including members of the Gypsy community, living in northern Cyprus

The Court determined that there may have been individual cases of interference with the rights of political opponents and that the Turkish-Cypriot Gypsy community suffered hardship at the hands of the TRNC authorities; however the Court was not persuaded that the aggrieved individuals fully tested and exhausted the domestic remedies available. Therefore, the Court held that it was not established that it had been an administrative practice of violation of the rights of Turkish Cypriots who are opponents of the regime in Northern Cyprus nor a violation as a matter of administrative practice of the rights of the members of the Turkish-Cypriot Gypsy community under Articles 3, 5, 8, and 14 of the Convention.

Although there had been no trials of civilians by military court the Court held that a State was entitled to challenge under the Convention a law in abstracto, and therefore the fact that certain texts clearly introduced and authorized the trial of civilians by the military courts violated Article 6 of the Convention.

The Court also found there had been no violation, as a matter of administrative practice, of the right of freedom of association or assembly under Article 11 of the Convention in respect of Turkish Cypriots living in northern Cyprus, nor any violation of Article 1 of Protocol N. 1 by reason of failure to secure enjoyment of their possessions in southern Cyprus to Turkish Cypriots living in northern Cyprus, nor any violation of Article 13 of the Convention by reason of a failure as a matter of administrative practice to secure effective remedies to Turkish Cypriots living in northern Cyprus.

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There were partially dissenting opinions from Judges Palm, Jungwiert, Levits, Pantiru, Kovler and Marcus-Helmons; from Judge Costa; from Judge Fuad; from Judge Marcus Helmons.

#### **Decision Excerpts**