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**THE EUROPEAN COURT OF HUMAN RIGHTS ANNOUNCED ITS DECISION ON
THE CASES REGARDING THE PROPERTY ISSUE IN CYPRUS**

The European Court of Human Rights (ECHR) have analyzed the 8 cases regarding to property issues within a single framework and announced its final decision on the 5th March 2010. Regarding the cases the topics of which and the Court's stance will be examined in more detail below, the Court decided that the Immovable Property Commission (IPC) which has been established in Turkish Republic of Northern Cyprus (TRNC) is an effective domestic law authority, thus the domestic remedies should be first exhausted by this Commission (IPC). Since the IPC works as an independent and neutral judicial body, it has the authority to decide whether it is the case of restitution, compensation or exchange of these properties. The Court stressed that only cases for which the domestic remedies have been exhausted could be brought to the Court. It has also underlined that this decision by no means implied the recognition of the TRNC.

Before laying down some details regarding to the decision, it is important to mention some developments related to the IPC. Within the framework of *Xenides-Arestis* case, the Commission has accepted it as domestic remedies for Turkey. In the cases where there have been claims of compensations and restitution from Turkey, the Court called on Turkey to find an effective solution for the property issue. As a result, Turkey constituted the Commission with the collaboration of the TRNC. Hence, since TRNC is not recognized at internal level, the United Nations Security Council holds Turkey responsible for the domestic remedies. This point is noted in the decision several times.

Which suits did the Court combine and what were the complaints?

1. Demopoulos and the others 46113/99
2. Chrysostomi 3843/02
3. Lordos and Lordou Anastasiadou 13751/02
4. Kanari-Eliadou and the others 13466/03
5. Sotiriou and Moushoutta 10200/04
6. Stylas 14163/04
7. Charalambou Onoufriou and the others 19993/04
8. Chrisostomou 21819/04

The main arguments put forward in the cases listed above are that the plaintiff Greek Cypriots have immovable property in the lands of the TRNC and they cannot access to their properties

since 1974 due to the presence of Turkish troops on the island. Therefore, they assert that they are being deprived from their rights to access their own houses, goods, and properties in the Northern Cyprus. These complaints are evaluated under the article 8 of the European Convention on Human Rights and its Additional Protocol No. 1 Article 1 / 1.

In its defense, Turkey argued that the domestic remedies were not exhausted by the Greeks. Turkey's request not to be held responsible for the legal acts carried out by the TRNC, has been considered artificial by the Court and therefore it has been rejected. Reminding the *Xenides-Arestis* case, ECHR emphasized that IPC was established only because Turkey would be held responsible for the domestic remedies procedures of the TRNC.

ARTICLE 8 (Protection of private and family life)

1. 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 1 OF PROTOCOL NO 1 (protection of property)

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.

What kind of path did the European Court of Human Rights follow?

Linked with the arguments presented by the different parties and witnesses, the Court has based its decisions regarding to two different stages. First the European Court of Human Rights made an assessment whether the exhaustion of domestic remedies could be carried out for the situation of Greek-Cypriot property owners in the Turkish Republic of Northern Cyprus (TRNC). Then the European Court of Human Rights examined whether the Immovable Property Commission (IPC) were able to provide effective redress in these cases. The European Court of Human Rights has reached a verdict in accordance with the submissions that came and the defenses pronounced and by taking into account the following issues:

- According to the plaintiffs, since the Commission was established in the TRNC only after the trials have been initiated, it can be considered that domestic remedies were exhausted. On the contrary, the European Court will take into account the legal framework that was in force at the time the cases were opened, however the European Court asserted that under certain circumstances, derogations could be applied. Within this framework, in accordance with the principle of subsidiary, it has been asserted that within the efficiency and accessibility of IPC these constitute a domestic remedy.
- Against the allegation regarding the absence of an efficient dispute settlement mechanism, the Court has confirmed that the previous situation has changed and that the ICP has established the proper environment for reaching a solution.
- The ECHR has confirmed that turning to IPC as a domestic legal authority for the cases related to property issues, applying to IPC, does not imply either the recognition of the TRNC or the change of position of international community regarding to

Northern Cyprus. At the same time, the Court has confirmed that factual or legal borders will not prevent the exhaustion of all the domestic remedies.

- The ECHR has explained that in the cases brought in justice, the Greek Cypriots have not claimed for any damages or compensation neither from the use or loss of their properties. The Court has pointed out that Greek Cypriots who have properties in the TRNC could temporarily bring a case to the ECHR till the resolution of the Cyprus problem. In addition to this, the ECHR pointed out that in some cases, the claimers have not seen their properties within the last years or they have simply changed hands. As a result, the losses claimed regarding to properties take a speculative dimension.
- Regarding to the statements mentioned above, the Court declared that this does not deprive property owners from their rights. For the claimers, the Court explained that with no strings attached it was considered unrealistic to request the restitution of these properties.
- Furthermore the Court underlined that even though international community might consider the presence of Turkish soldiers on the island as illegal occupation, it does not imply that the ECHR will interpret the Human Rights Convention in a different way.

What is the Conclusion of the Court?

Basing its decision on Article 1 of Protocol no 1, the ECHR reached two main conclusions. Firstly the Greek Cypriots have the possibility to turn to the ICP for their property issues. Secondly, the property claimers would have exhausted all the domestic remedies and therefore their submissions had been rejected. The ECHR does not impose its own position to be used as reference by ICP and emphasize that the submitters can wait for the resolution to the Cyprus problem to apply to the Court.

Within its interpretation of article 8, the Court came to a similar conclusion implying that all domestic remedies were not exhausted. At the same time, in order for the property owners to claim some damages for the pain and suffering, they present the necessary legal conditions to the IPC. Moreover, in the cases related to property, in order to make reference to term “home” the applicant should have occupied the property for some considerable time. Within this framework, considering that the second applicant in this case has moved from the house that belonged to her family in 1974 and lived somewhere else during her whole life any revendication would be then considered speculative by the Court.

What next?

The most important conclusion that has been withdrawn from this decision was that the resolution for the property claims and the Cyprus problem in general could not be reached in Court trials but within the framework of negotiations. In addition to this, the Court stressed that the Commission made up of seven judges among whom two are foreigners presents an efficient and accessible domestic remedies’ opportunity. However, this does not mean that these decisions taken by the Commission are decisive. The applicants can appeal to the ECHR. This decision does not imply by any means that TRNC would be recognized officially. The distinction between these two critical points remains essential.

Since the Court started to receive these cases in November 2009, the number of cases brought before the IPC stood at 433 and it has raised to 455 in the day the decision has been taken on the 5 March. Out of these, 94 had been concluded by means of friendly settlement. For 86 cases, compensation has been rewarded reaching an amount of 40 million of sterling. In the same time, in 6 cases, the IPC had ordered restitution and compensation and in two cases exchange of property was agreed.

It can be assessed that the decision does not create an effect that could give an impetus to the negotiation process between the two leaders of Cyprus or to favor one side. Therefore this judgment is not expected to constitute a new constraint to the resolution of property issue, contrary to the “Orams” decision of EU’s Court of Justice which favored Greek side. Within its evaluation of the Annan Plan, the Court has also emphasized that Greek Cypriots were also responsible for the disagreement in property issues.