ОРГАНИЗАЦИЯ ОБЪЕДИНЕННЫХ НАЦИЙ **A**

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СОВЕТ ПО ПРАВАМ ЧЕЛОВЕКА
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ОСУЩЕСТВЛЕНИЕ РЕЗОЛЮЦИИ 60/251 ГЕНЕРАЛЬНОЙ АССАМБЛЕИ ОТ 15 МАРТА 2006 ГОДА, ОЗАГЛАВЛЕННОЙ "СОВЕТ ПО ПРАВАМ ЧЕЛОВЕКА"

Вербальная нота Постоянного представительства Турции при Отделении Организации Объединенных Наций в Женеве и других международных организациях в Швейцарии от 11 июня 2007 года, адресованная в секретариат Совета по правам человека*

Постоянное представительство Турецкой Республики при Отделении Организации Объединенных Наций в Женеве и других международных организациях в Швейцарии свидетельствует свое уважение секретариату Совета по правам человека и со ссылкой на свою ноту от 3 мая 2007 года (№ 570.20/2007/BMCO DT/3941) имеет честь препроводить настоящим приложение к письму проф. Тургая Авси, заместителя премьер-министра и министра иностранных дел Турецкой Республики Северного Кипра, в котором излагаются мнения турко-кипрской общины по докладу Генерального секретаря "Вопросы прав человека на Кипре" (A/HRC/4/59) от 9 марта 2007 года.

Само письмо проф. Тургая Авси уже было распространено в качестве официального документа пятой сессии Совета по правам человека (A/HRC/5/G/2), но без этого приложения. Для того чтобы дополнить свое сообщение, Постоянное представительство Турецкой Республики хотело бы просить также распространить эту ноту и приложение к ней в качестве официального документа пятой сессии Совета по правам человека.

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* Вербальная нота распространяется на всех языках. Приложение распространяется в полученном виде только на языке представления.

Annex

Talking Points
on
Issues Concerning Property Claims
in the
European Court of Human Rights (ECtHR)
Interstate Case of Cyprus against Turkey

Cyprus v. Turkey judgment of 10 May 2001 consists of the following clusters:

1- the question of Greek Cypriot missing persons
2- the living conditions of Greek Cypriots in Northern Cyprus
3- the question of property claims
4- the rights of Turkish Cypriots living in Northern Cyprus

The Deputies have been supervising the execution of the Cyprus v. Turkey judgment since July 2001.

At their 928th meeting on 7 June 2005, the Committee of Ministers of the Council of Europe decided to close the examination of the rights of Turkish Cypriot living in Northern Cyprus, having found the measures taken with regard to this cluster satisfactory.

In the light of many positive developments, the Committee also decided, at its 948th and 966th meetings respectively, to resume consideration of the education and freedom of religion aspects of the second cluster at their 982nd meeting on 5-6 December 2006, with a view to closing examination thereof.

The question of Greek Cypriot properties in the North and Turkish Cypriot properties in the South is one of the thorniest issues of the Cyprus question. It has constituted a major obstacle to a political solution for decades. Whilst the Greek Cypriots have taken the property issue to ECtHR, Turkish Cypriots did not and today there are no judgments from ECtHR regarding Turkish Cypriot properties left in the South.

Examination of property issues had been put aside by the Deputies due to its complexity. As the Secretariat noted that "…*Questions in this respect are, however, being raised before the Court in the context of its examination of the admissibility and merits of new cases and the Committee*

might wish to await the Court's examination of these questions before pursuing its examination of this matter."[1]

Acknowledging the fact that the settlement of this issue is linked to the settlement of the Cyprus issue, the Deputies reached consensus to defer the examination of this cluster at the outset of the examination of the implementation of the judgment. The issue was not raised in the Committee of Ministers for four years, until February 2005.

It was not a mere coincidence that the Greek Cypriot delegation raised the issue and requested its examination, for the first time after the Court delivered its judgment on the merits of 22 December 2005 on the Xenides-Arestis (XA) case.
In its judgment on XA, the Court asked the respondent state to introduce a general measure which would provide remedy for the property rights of not only Ms. Xenides-Arestis, but for all similar property claims. The Court decided to adjourn consideration of all applications deriving from the same general cause pending its final judgment in the XA case.

In its previous judgments concerning the property claims of the Greek Cypriots (Loizidou, Demades, Eugenia Michaelidou Developments Ltd, and Michael Tymvios) as well as the interstate case, the Court has not indicated any general measure. The XA judgment of 22 December 2005 is the first time that the Court has identified a general measure, *i.e.* the creation of an effective domestic remedy.

Taking into account the Court's admissibility decision of 14 March 2005 and its judgment on the merits of 22 December 2005 on XA application, Law titled "the Law for the Compensation, Exchange and Restitution of Immovable Properties (Law no. 67/2005)" ("the Law" hereafter) was enacted in North Cyprus in December 2005. In March 2006 the rules and procedures were adopted for the workings of the Immovable Property Commission (IPC).

The IPC was set up in response to the XA judgment to create a domestic remedy in solving property issues of the Greek Cypriots. It became fully operational on 16 March 2006. The mechanism is entirely based on the comprehensive guidelines suggested by the Court.

According to the Law, all real or legal persons claiming legitimate rights to movable and immovable properties may bring claims to the Immovable Property Commission. Compensation is made available in respect of movable properties which belonged to future applicants prior to 13 February 1975 and had to be abandoned beyond volition.

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[1] CM/Inf(2004)4/5

In terms of redress, along with compensation for pecuniary damages, including loss of use, the Law provided different options for applications, *i.e.* compensation in lieu of property restitution and exchange with property of Turkish Cypriots left in South Cyprus.

In cases where immediate restitution can not be provided, another possibility would be to implement the decision for restitution after the settlement of the Cyprus issue under the conditions and the safeguards in the interest of the applicant as provided in the Law. The Law stipulates that, should the Commission decide for the restitution of the property to take place following a general settlement of the Cyprus issue, no construction, improvement, purchase or sale would be permitted on that property.

The new Law also affords compensation for non-pecuniary damages owing to the non-enjoyment of right to respect for home. The non-pecuniary damages may be claimed besides all means of redress that the law provided: restitution, exchange or compensation.

Since the Law reserves the right to apply to the Commission of persons who have applied to the European Court of Human Rights before the entry into force of this law, claiming that their right of ownership of movable and immovable properties located in the north of Cyprus were infringed, there is no vagueness in terms of retroactivity of the law.

The impartiality and the independence of the Property Commission were assured in accordance with the guidance provided by the Court. The Law stipulates that any person directly or indirectly deriving any benefit from immovable properties on which rights are claimed by those who had to move from the north of Cyprus in 1974, could not be appointed as members of the Commissions.

Two international personalities well-known to the Council of Europe, Mr. Daniel Tarschys, former Secretary General of the Council of Europe, and Mr. Hans Christian Krüger, former Deputy Secretary General of the Council of Europe and Secretary of the Human Rights Commission, became members in the Commission, consisting of seven members.

The Law reserves the right of appeal to the High Administrative Court as well as of further appeal to the European Court of Human Rights, of the applicants who are not satisfied by the decisions of the Commission.

Thus, all requirements of the admissibility decision of 14 March 2005 and the judgment on the merits of 22 December 2005, regarding the domestic remedy have been met.

As of today, the total number of Greek Cypriot applications before the IPC has reached over 125. Of these applications, 18 are concluded by agreement. 3 of these agreements provided full restitution of the properties concerned. 15 others involved compensation for the current value. All these agreements also included compensation for the loss of use of these properties since 1974 until the date of application to the IPC. All decisions were reached by consensus within the Commission and all applications were concluded as friendly settlements between the Commission and the applicants.

It is evident that the property Commission is regarded by Greek Cypriots as the effective mechanism for redress for the settlement of property claims. The IPC has already established itself a reliable and effective remedy.

The Commission also sought reaching a settlement with the applicant in the XA case. Proposals from the Commission remained without reply, even though the Commission addressed to the applicant's legal representative a detailed proposal on the basis of objective legal and economic criteria, *i.e.* 466,289- CYP (approximately 800,000 Euros) for compensation for the current value of the property and loss of use.

In paragraph 37 of its decision on just satisfaction in the XA decision of 7 December 2006, the Court held that "… *the new compensation and restitution mechanism, in principle, has taken care of the requirements of the decision of the Court on admissibility of 14 March 2005 and the judgment on the merits of 22 December 2005"*. In the absence of a friendly settlement at this stage, however, the Court took the Commission's proposal in making its assessment on just satisfaction.

In light of the information provided above, with an effective remedy already in place, providing redress for property claims in northern Cyprus, the situation has changed substantially since the inter-state judgment of Cyprus v. Turkey. In other words, since the inter-state judgment of 2001, the Court, in its subsequent judgment of XA, indicated a general measure for property claims, which has been put into effect and is functioning effectively.

This remedy provides effective remedy for those applications pending before the Court as well as redress for those applications where the Court found violations of the Convention rights.

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