

# Cyprus v. Turkey

EUROPEAN COURT OF HUMAN RIGHTS GRAND CHAMBER

Application no. 25781/94 May 10, 2001

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*Author's Note:* This court [see §9.6] sits in Strasbourg, France. Under International Law, individuals harmed by government action are normally expected first to pursue local remedies in their own country—before seeking assistance from an international tribunal. The central issue in this case is whether the courts established by the Turkish occupying forces in northern Cyprus were legally capable of providing such domestic remedies. A majority of the judges said that they could do so. A number of judges dissented, however. As you read this opinion, consider whether you would be a majority or dissenting judge:

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## Court's (Majority) Opinion:

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3. The applicant Government alleged with respect to the situation that has existed in Cyprus since the start of Turkey's military operations in northern Cyprus in July 1974 that the Government of Turkey ("the respondent Government") have [sic] continued to violate the [European] Convention [on Human Rights] .

### ... THE CIRCUMSTANCES OF THE CASE ...

13. The complaints raised in this application arise out of the Turkish military operations in northern Cyprus in July and August 1974 and the continuing division of the territory of Cyprus.

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14. A major development in the continuing division of Cyprus occurred in November 1983 with the proclamation of the "Turkish Republic of Northern Cyprus" (the "TRNC") and the subsequent enactment of the "TRNC Constitution" on 7 May 1985.

This development was condemned by the international community. On 18 November 1983 the United Nations Security Council adopted Resolution 541 (1983) declaring the proclamation of the establishment of the "TRNC" legally invalid and calling upon all States not to recognise any Cypriot State other than the Republic of Cyprus. A similar call was made by the Security Council on 11 May 1984 in its Resolution 550 (1984). In November 1983 the Committee of Ministers of the Council of Europe decided that it continued to regard the government of the Republic of Cyprus as the sole legitimate government of Cyprus and called for respect of the sovereignty, independence, territorial integrity and unity of the Republic of Cyprus.

15. According to the respondent Government, the "TRNC" is a democratic and constitutional State which is politically independent of all other sovereign States including Turkey, and the administration in northern Cyprus has been set up by the Turkish-Cypriot people in the exercise of its right to self-determination and not by Turkey. Notwithstanding this view, it is only the Cypriot government which is recognised internationally as the government of the Republic of Cyprus in the context of diplomatic and treaty relations and the working of international organisations.

16. United Nations peacekeeping forces ("UNFICYP") maintain a buffer-zone. A number of political initiatives have been taken at the level of the United Nations aimed at settling the Cyprus problem on the basis of institutional arrangements acceptable to both sides.

...

18. The instant application is the first to have been referred to the Court. The applicant Government requested the Court in their memorial to "decide and declare that the respondent State [Turkey] is responsible for continuing violations . . . of the Convention . . . .

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.

[Here, the court addresses the alleged violations of the rights of Greek-Cypriot missing persons and their property in the TRNC, which is governed by military courts.]

...

#### THE LAW

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### *3. As to the respondent State's responsibility under the Convention in respect of the alleged violations*

69. The respondent Government disputed Turkey's liability under the Convention for the allegations set out in the application. In their submissions to the Commission, the respondent Government claimed that the acts and omissions complained of were imputable exclusively to the "Turkish Republic of Northern Cyprus" (the "TRNC"), an independent State established by the Turkish-Cypriot community in the exercise of its right to self-determination and possessing exclusive control and authority over the territory north of the United Nations buffer-zone. . . .

70. As in the proceedings before the Commission, the applicant Government contended before the Court that the "TRNC" was an illegal entity under international law since it owed its existence to the respondent State's unlawful act of invasion of the northern part of Cyprus in 1974 and to its continuing unlawful occupation of that part of Cyprus ever since. The respondent State's attempt to reinforce the division of Cyprus through the proclamation of the establishment of the "TRNC" in 1983 was vigorously condemned by the international community, as evidenced by the adoption by the United Nations Security Council of Resolutions 541 (1983) and 550 (1984) and by the Council of Europe's Committee of Ministers of its resolution of 24 November 1983 (see paragraph 14 above).

71. The applicant Government stressed that even if Turkey had no legal title in international law to northern Cyprus, Turkey did have legal responsibility for that area in Convention terms, given that she exercised overall military and economic control over the area. This overall and, in addition, exclusive control of the occupied area was confirmed by irrefutable evidence of Turkey's power to dictate the course of events in the occupied area. In the applicant Government's submission, a Contracting State to the Convention could not, by way of delegation of powers to a subordinate and unlawful administration, avoid its responsibility for breaches of the Convention, indeed of international law in general. To hold otherwise would, in the present context of northern Cyprus, give rise to a grave lacuna in the system of human-rights protection and, indeed, render the Convention system there inoperative.

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FOR THESE REASONS, THE COURT

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4. Holds by sixteen votes to one that the facts complained of in the application fall within the "jurisdiction" of Turkey . . . and therefore entail the respondent State's responsibility under the Convention;

5. Holds by ten votes to seven 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.

. . .

**Partly Dissenting Opinion of Judge Palm** [joined by five other judges]

While sharing most of the Court's conclusions in this complex case, I feel obliged to record my dissent in respect of one major issue: the significance attached by the Court to the existence of a system of remedies within the "TRNC". I consider the Court's approach to this question to be so misguided that it taints the judgment as a whole. . . .

In its *Loizidou v. Turkey* judgment of 18 December 1996 (merits) the Court found that Article 159 of the [TRNC] fundamental law was to be considered as invalid against the background of the refusal of the international community to regard the "TRNC" as a State under international law. It did not "consider it desirable, let alone necessary . . . to elaborate a general theory concerning the lawfulness of legislative and administrative acts of the 'TRNC'" (p. 2231, §§ 44-45). The Court was obviously concerned to limit its reasoning . . . to avoid straying into areas of particular complexity and delicacy concerning the "legality" of acts of an "outlaw" regime. It is my firm view that the Court should be equally careful in the present case to avoid elaborating a general theory concerning the validity and effectiveness of remedies in the "TRNC" . . . . . Such a policy of judicial restraint in this area is supported by three main considerations. In the first place, any consideration of remedies gives rise to the obvious difficulty that the entire court system in the "TRNC" derives its legal authority from constitutional provisions whose validity the Court cannot recognise—for the same reasons that it could not recognise Article 159 in the *Loizidou* case—without conferring a degree of legitimacy on an entity from which the international community has withheld recognition. An international court should not consider itself free to disregard either the consistent practice of States in this respect or the repeated calls of the international community not to facilitate the entity's assertion of statehood. . . . The artificiality of this approach which reflects the reality that the "TRNC" has no standing in the international community or indeed before the Court and is recognised by Turkey alone is, in itself, a reason for the Court to exercise great caution before giving a broad ruling on the status of such "remedies" under the Convention.

Of course, I accept that even in a situation of illegality it is clearly in the interests of the inhabitants that some form of court system is set up to enable basic everyday disputes to be settled by a source of authority. Moreover, it is not to be excluded that the decisions of such courts, particularly in civil matters – divorce, custody arrangements, contracts and the like—could be recognised by the courts of other countries. Such recognition has indeed occurred from time to time, notably after the situation of illegality has ended. However, it is precisely because of the importance of such arrangements for the local population—if the situation permits that recourse be had to them—that an international court should be reluctant to venture into any examination of their legality unless it is strictly necessary to do so. Any other approach may ultimately be harmful to the de facto utility of such a system. For example, a finding of "illegality" may discourage the use of such fora to settle disputes. Equally, a finding upholding the lawfulness of such arrangements in the present case could give rise to a call by the legitimate Cypriot government that such tribunals be shunned by the Greek-Cypriot community so as not to

compromise the government's internationally asserted claim of illegality. The Court should not assume too readily that it is acting for the benefit of the local population in addressing the legality of such arrangements.

...  
In the present judgment the Court unwisely embarks on the elaboration of a general theory of remedies in the "TRNC" . . . .

More importantly, such a general conclusion has, as a direct consequence, that the European Court of Human Rights may recognise as legally valid decisions of the "TRNC" courts and, implicitly, the provisions of the Constitution instituting the court system. Such an acknowledgment, notwithstanding the Court's constant assertions to the contrary, can only serve to undermine the firm position taken by the international community which through the United Nations Security Council has declared the proclamation of the "TRNC"'s statehood "legally invalid" and which has stood firm in withholding recognition from the "TRNC".

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**Partly Dissenting Opinion Of Judge Marcus-helmons (Translation)**

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Accordingly, . . . requiring the inhabitants of Cyprus to exhaust domestic remedies before the "TRNC" before applying to the European Court of Human Rights when, moreover, those remedies are known to be ineffective obviously constitutes an additional obstacle for the inhabitants to surmount in their legitimate desire to secure an end to the violation of a fundamental right by applying to Strasbourg.

...  
[T]he judgment the Court seems to jump to hasty and ill-advised conclusions which it considers to be a widely held opinion on this subject. As evidence of this, one need only examine, among other sources, the case-law of the Supreme Court of the United States on the validity of the confederate acts of the South during the Civil War. It should be noted that the southern authorities were legal until they seceded (the position thus being totally different from one in which courts are illegally established after a military invasion by a neighbouring State). Shortly after the Civil War ended, the Supreme Court recognised in the cases [citations omitted] and within very strict limits that the administrative acts and judgments of the confederate courts had some validity to the extent that their aim and execution did not conflict with the authority of the national Government and did not infringe citizens' constitutional rights. . . .

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**Notes & Questions**

1. What was the majority's decision, and its reasoning for that decision?
2. Why did the dissenters disagree? Was their objective to deprive Greek Cypriots in Northern Cyprus from having any remedy before either the TRNC military courts or the European Court of Human Rights?
3. Which opinion makes the most sense? Should the issue related to the TRNC's recognition status trump Northern Cypriot access to any available remedy?
4. In 2004, Cyprus (and nine other nations) joined the European Union, although a UN plan to reunite the island failed. Turkish Cypriots in the north voted in favor of the reunification plan, while Greek Cypriots in the south rejected it. Each of the respective referenda had to pass for reunification to occur. With the defeat of the planned reunification, Cyprus entered the EU, but

all EU laws and benefits will apply only in the recognized south. Turkey remains a candidate for EU membership.