

Court/Tribunal: European Court of Human Rights

Case: *Demopoulos and Others v. Turkey* (2010)

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The Applicants in this case are a group of Greek-Cypriots who claimed to own or partly own immovable or movable property in the northern part of Cyprus that was under the control of the Turkish Republic of Northern Cyprus ("TRNC"). The applicant claims that they have been deprived of their property rights since 1974. The applicants maintain that under Article 8 of the Convention and Article 1 of Protocol No. 1, they have been deprived of the use of their property.

In 1974, the Turkish military occupied the northern area of Cyprus. A proclamation declared the formation of the TRNC in November 1983. In 1985 the TRNC enacted a constitution. The declaration of the TRNC was condemned by the international community. In November 1983, the United Nations Security Council adopted Resolution 541. Resolution 541 declared the establishment of the TRNC legally invalid. United Nations peacekeeping forces have maintained a buffer zone between northern and southern Cyprus. In April 2004, the UN submitted a plan to the people of Cyprus, known as the Annan Plan. The Annan Plan would have created the United Cyprus Republic. In a referendum, 76% of Greek Cypriots rejected the plan, while 65% of Turkish Cypriots accepted it.

The relevant portions of the TRNC Constitution read as follows:

Article 159 (1) (b) and (c):

"All immovable properties, buildings and installations which were found abandoned on 13 February 1975 when the Turkish Federated State of Cyprus was proclaimed or which were considered by law as abandoned or ownerless after the above-mentioned date, or which should have been in the possession or control of the public even though their ownership had not yet been determined ... and ... shall be the property of the TRNC notwithstanding the fact that they are not so registered in the books of the Land Registry Office; and the Land Registry Office shall be amended accordingly."

Article 159 (4):

"In the event of any person coming forward and claiming legitimate rights in connection with the immovable properties included in subparagraphs (b) and (c) of paragraph (1) above [concerning, *inter alia*, all immovable properties, buildings and installations which were found abandoned on 13 February 1975], the necessary procedure and conditions to be complied with by such persons for proving their rights and the basis on which compensation shall be paid to them, shall be regulated by law."

In December 2005 the TRNC enacted Law 67/2005, which established the Immovable Property Commission ("IPC") to adjudicate the rights of property owners and provide them with compensation when appropriate. The deadline to file a claim with the IPC was December 21, 2011. The applicant must prove beyond a reasonable doubt that the immovable property was registered in his or her name on July 20, 1974 or that they are the legal heirs to that person. In the case of movable property, the person has to prove that they owned the property on February 13, 1975. Second, they have to prove that they were forced to abandon the property because of conditions beyond their control. Last, there must be no other persons with a claim to the immovable property according to the Land Registry records.

Turkey argued the acts complained of occurred under the authority of the TRNC. Second, they argued that the applicants failed to exhaust domestic remedies. In applicants responded that they should not be required to exhaust remedies that became available several years after the introduction of their complaint. The applicants also argued that the IPC was incapable of being fair. Last, the applicants contended that the compensation or restitution remedies were inadequate and full of exceptions.

The Grand Chamber based their ruling on the issue of exhaustion of remedies. They first stated that it was incumbent upon the Government to show: that the remedy offered was an effective remedy in theory; that the

remedy was in practice at the relevant time; that the remedy was accessible; that the remedy was capable of providing redress for the applicant's complaints; and that the remedy offered a reasonable prospect of success. Once the Government meets that burden, it falls to the applicant to show that the remedy was exhausted or that the remedy was inadequate and ineffective in the particular instance.

The Grand Chamber ruled that the IPC procedures within the TRNC were domestic remedies of Turkey. The Grand Chamber found that the remedies were practical and effective. Since March 2006, the IPC concluded 85 applications. Compensation was paid and/or restitution made in several of those cases. The Grand Chamber concluded that owing to practical concerns of restoring property rights 35 years after the dispossession and current interests in the use of the property, it should be left to the Contracting State to implement a course of redress for breach of property rights. The Grand Chamber also found: that there was no real evidence the IPC was not impartial, noting that the IPC had two independent international members; that the amount given in compensation was adequate; and that the burden of proof required by the IPC was necessary and unavoidable. The Grand Chamber further concluded that the procedure was not overly burdensome or unduly time consuming.

The Grand Chamber found that the IPC procedure established by Law 67/2005 provides an accessible and effective means of redress for the applicants in regards to the property owned by the Greek Cypriots. The Grand Chamber rejected the claims of the applicants on the grounds of the non-exhaustion of domestic remedies. The Grand Chamber stated the applicants did not have to use the IPC procedure but could wait for a political solution.

The Grand Chamber also disposed of the complaint of an applicant who claimed that she was deprived of her home even though she did not have a property interest. The Grand Chamber stated that for one to claim a deprivation of their home under Article 8, they must have enjoyed a concrete and persist link with the property concerned. The person making an Article 8 claim does not necessarily have to have a property interest. An ongoing and recent occupation for some considerable time is the most significant element.

The Grand Chamber found that the applicant was very young when she left her "home" in TRNC. She had been living elsewhere with her family for the past twenty eight years before making her application. Even though she might inherit the property in the future, that was too speculative. Her application was rejected.

Last, the Grand Chamber evaluated the applicants' claim under Article 14. The applicants argued that they were subjected to a difference in treatment that was not based on any objective or reasonable justification. The Grand Chamber ruled that in the previous cases concerning property in Northern Cyprus, they have not found any breach of Article 14.