EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Grand Chamber judgment on the question of just satisfaction in the Cyprus v. Turkey case

In today's Grand Chamber judgment in the case of **Cyprus v. Turkey** (application no. 25781/94), which is final[1], the European Court of Human Rights ruled on the question of the application of Article 41 (just satisfaction).
The Court held, *by a majority*, that the passage of time since the delivery of the principal judgment on 10 May 2001 did not preclude it from examining the Cypriot Government's just satisfaction claims.

The Court held, *by a majority*, that Turkey was to pay Cyprus 30,000,000 euros (EUR) in respect of the non-pecuniary damage suffered by the relatives of the missing persons, and EUR 60,000,000 in respect of the non-pecuniary damage suffered by the enclaved Greek-Cypriot residents of the Karpas peninsula. These amounts are to be distributed by the Cypriot Government to the individual victims under the supervision of the Committee of Ministers.

Principal facts

The case concerned the situation in northern Cyprus since Turkey carried out military operations there in July and August 1974, and the continuing division of the territory of Cyprus since that time.

In its Grand Chamber judgment delivered on 10 May 2001 the Court found numerous violations of the Convention by Turkey, arising out of the military operations it had conducted in northern Cyprus in July and August 1974, the continuing division of the territory of Cyprus and the activities of the "Turkish Republic of Northern Cyprus" (the "TRNC"). Regarding the issue of just satisfaction, the Court held unanimously that it was not ready for decision and adjourned its consideration.

The procedure for execution of the principal judgment is currently pending before the Committee of Ministers.

On 31 August 2007 the Cypriot Government informed the Court that they intended to submit a request to the Grand Chamber for it to resume consideration of the question of just satisfaction. On 11 March 2010 the Cypriot Government submitted to the Court their claims for just satisfaction concerning the missing persons in respect of whom the Court had found a violation of Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment) and 5 (right to liberty and security).

On 25 November 2011 the Cypriot Government sent the Court a document concerning the procedure before the Committee of Ministers for execution of the principal judgment, requesting the Court to take certain steps in order to facilitate the execution of that judgment. In response to some further questions and an invitation from the Court to submit a final version of their claims for just satisfaction, the Cypriot Government on 18 June 2012 submitted their claims under Article 41 concerning the missing persons, and raised claims in respect of the violations committed against the enclaved Greek-Cypriot residents of the Karpas peninsula.

1 Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

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Procedure and composition of the Court

The present application had been introduced before the former European Commission of Human Rights in 1994. It was referred to the European Court of Human Rights by the Government of Cyprus on 30 August 1999 and by the European Commission on 11 September 1999. The Grand Chamber delivered a judgment on the merits on 10 May 2001.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Françoise **Tulkens** (Belgium),
Guido **Raimondi** (Italy),
Nina **Vajić** (Croatia),
Mark **Villiger** (Liechtenstein),
Corneliu **Bîrsan** (Romania),
Boštjan M. **Zupančič** (Slovenia),
Alvina **Gyulumyan** (Armenia),
David Thór **Björgvinsson** (Iceland),
George **Nicolaou** (Cyprus),
András **Sajó** (Hungary),
Mirjana **Lazarova Trajkovska** ("the former Yugoslav Republic of Macedonia"),
Ledi **Bianku** (Albania),
Ann **Power-Forde** (Ireland),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Paulo **Pinto de Albuquerque** (Portugal),

and also Michael **O'Boyle**, *Deputy Registrar.*

Decision of the Court

Admissibility of the Cypriot Government's claims

The Court reiterated that the European Convention on Human Rights was an international treaty to be interpreted in accordance with the relevant norms and principles of public international law and, in particular, in the light of the Vienna Convention on the Law of Treaties of 23 May 1969. The Court had never considered the provisions of the Convention as the sole framework of reference for the interpretation of the rights and freedoms enshrined therein. On the contrary, it also had to take into account any relevant rules and principles of international law applicable in relations between the Contracting Parties.

The Court acknowledged that general international law, in principle, recognised the obligation of the applicant Government in an inter-State dispute to act without undue delay in order to uphold legal certainty and not to cause disproportionate harm to the legitimate interests of the respondent State (see *Nauru v. Australia,* International Court of Justice).

The Court observed that the present application had been introduced in 1994, before the former European Commission of Human Rights. Under the Rules of Procedure of the Commission then in force, neither applicant Governments nor individual applicants had been required to indicate their just satisfaction claims in their application form. The Court reiterated that in its letter of 29 November 1999 sent to both Governments it had instructed the applicant Government not to submit any claim for just satisfaction at the stage of the examination of the case on the merits; it was thus understandable that they had not done so.

The Court had held in its judgment on the merits that the issue of the possible application of Article 41 was not ready for decision and had adjourned consideration thereof. No time-limits had been fixed for the parties to submit their just satisfaction claims. Accordingly, the Court considered that the fact that the Cypriot Government had not submitted their claims for just satisfaction until 11 March 2010 did not render the claims inadmissible, and it saw no reason to reject them as being out of time.

Applicability of Article 41 in inter-State cases

The Court observed that, until now, the only case where it had had to deal with the applicability of the just satisfaction rule in an inter-State case had been the case of *Ireland v. the United Kingdom*. The logic of the just satisfaction rule derived from the principles of public international law relating to State liability. The most important principle of international law relating to the violation by a State of a treaty obligation was that the breach of an engagement involved an obligation to make reparation in an adequate form. Bearing in mind the specific nature of Article 41 in relation to the general rules and principles of international law, the Court could not interpret that provision in such a narrow and restrictive way as to exclude inter-State applications from its scope. The overall logic of Article 41 of the Convention was not substantially different from the logic of reparations in public international law. Accordingly, the Court considered that Article 41 did, as such, apply to inter-State cases.

However, according to the very nature of the Convention, it was the individual and not the State who was directly or indirectly harmed and primarily "injured" by a violation of one or several Convention rights. If just satisfaction was afforded in an inter-State case, it always had to be done for the benefit of individual victims.

Just satisfaction award

The Court noted that the Cypriot Government had submitted just satisfaction claims in respect of violations committed against two precise and objectively identifiable groups of people, namely 1,456 missing persons and the enclaved Greek-Cypriot residents of the Karpas peninsula. Just satisfaction was not being sought with a view to compensating the Cypriot State for a violation of its rights but for the benefit of individual victims. Insofar as the missing persons and the Karpas residents were concerned, the Court considered that the Cypriot Government were entitled to make a claim under Article 41, and that granting just satisfaction in the present case would be justified.

In view of all the relevant circumstances of the case, the Court considered it reasonable to award the Cypriot Government aggregate sums of EUR 30,000,000 for the non-pecuniary damage suffered by the surviving relatives of the missing persons, and EUR 60,000,000 for the non-pecuniary damage suffered by the enclaved residents of the Karpas peninsula. Those sums were to be distributed by the Cypriot Government to the individual victims of the violations found in the principal judgment. The Court considered that it should be left to the Cypriot Government, under the supervision of the Committee of Ministers, to set up an effective mechanism to distribute the above-mentioned sums to the individual victims.

Cypriot Government's request for a "declaratory judgment"

In their submission of 25 November 2011 the Cypriot Government requested the Court to adopt a "declaratory judgment".

The Court observed that the respondent State was bound under Article 46 to comply with the principal judgment. It was not necessary to examine the question whether the Court had the competence under the Convention to make a "declaratory judgment" since it was clear that the respondent Government were, in any event, formally bound by the relevant terms of the main judgment.

The Court pointed out that it had found in the principal judgment a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus were being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights. It was for the Committee of Ministers to ensure that the findings of the principal judgment, which were binding and which had not yet been complied with, were given full effect by the Turkish Government. Such compliance was not consistent with any complicity in the unlawful sale or exploitation of Greek Cypriot homes and property in the northern part of Cyprus.

The Court's decision in the case of *Demopoulos and Others v. Turkey*, to the effect that cases presented by individuals concerning violation of property complaints were to be rejected for non-exhaustion of domestic remedies, in no sense disposed of the question of Turkey's compliance with the principal judgment in the present inter-State case.

Separate opinions

Judges Zupančič, Gyulumyan, David Thór Björgvinsson, Nicolaou, Sajó, Lazarova Trajkovska, Power-Forde, Vučinić and Pinto de Albuquerque expressed a joint concurring opinion. Judge Pinto de Albuquerque expressed a concurring opinion, joined by Judge Vučinić. Judges Tulkens, Vajić, Raimondi and Bianku expressed a partly concurring opinion, joined by Judge Karakaş. Judge Casadevall expressed a partly concurring and partly dissenting opinion. Judge Karakaş expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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