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Retrieved (28-April-2014) from: <http://web.archive.org/web/20100412000838/http://korbelsecurity.wordpress.com/2010/03/16/european-court-of-human-rights-on-right-of-return-for-refugees/>



European Court of Human Rights on “Right of Return” for Refugees

March 16, 2010

The European Court of Human Rights (ECHR), one of the world’s most respected bodies on the issue, last week released a ruling in the case of a number of Greek-Cypriots who had fled the north of the island during the Turkish invasion of 1974. What the ruling said will have implications for other unsettled issues of land, place and occupation. Discussion of the ruling follows below. Please note that the ruling cannot be challenged – decisions issued by the ECHR are final and are binding.

The case in question concerned the right of refugees to the possession of their properties left behind when they flee due to war or other civil disaster. The case was brought by a number of Greek-Cypriot refugees who fled the north (now called the Turkish Republic of Northern Cyprus) during or in advance of the Turkish invasion of the island in 1974.

The Greek-Cypriot refugees “argued principally that they had been prevented from enjoying their property and homes following the invasion of northern Cyprus by Turkey in 1974, and that they had been victims of discrimination.” These claims were made under the [European Convention on Human Rights](#) and its subsequent protocols, which said in part:

1. Everyone has the right to respect for... his home
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.

and additionally:

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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

The counter-argument, made on behalf of Turkey (as the TRNC is not a recognized state) was that the constitution of the TRNC established what is called an Immovable Property Commission (IPC) (in response to an earlier ruling from the court) which was required to deal with the issue of properties abandoned at the time of the Turkish invasion.

From the [court](#):

“TRNC” authorities enacted the new compensation law, Law 67/2005 (set out in Relevant Domestic Law and Practice above) which entered into force on 22 December 2005. The Immovable Property Commission (hereinafter the “IPC”), which was established under this law for the purpose of examining applications made in respect of properties within the scope of the aforementioned law, was composed of five to seven members, two of whom were foreign members, Mr Hans-Christian Krüger (former Secretary to the European Commission of Human rights and former Deputy Secretary General of the Council of Europe) and Mr Daniel Tarschys (former Secretary General of the Council of Europe), and had the competence to decide on the restitution, exchange of properties or payment of compensation. A right of appeal lay to the “TRNC” High Administrative Court.

With that follows the meat of the court’s decision and what many find so shocking in its reasoning:

Some thirty-five years have elapsed since the applicants lost possession of their property in northern Cyprus in 1974. Generations have passed. The local population has not remained static. Turkish Cypriots who inhabited the north have migrated elsewhere; Turkish-Cypriot refugees from the south have settled in the north; Turkish settlers from Turkey have arrived in large numbers and established their homes. Much Greek-Cypriot property has changed hands at least once, whether by sale, donation or inheritance.

Thus, the Court finds itself faced with cases burdened with a political, historical and factual complexity flowing from a problem that should have been resolved by all parties assuming full responsibility for finding a solution on a political level. **This reality, as well as the passage of time and the continuing evolution of the broader political dispute must inform the Court’s interpretation and application of the Convention which cannot, if it is to be coherent and meaningful, be either static or blind to concrete factual circumstances.**

This court then goes on to say that if the offending party has established a fair and equitable means of compensating refugees for their properties then they must avail themselves of the remedies provided – no matter how odious dealing with the authorities of the area which is occupied may be to them:

The Court is therefore not persuaded that the acknowledgement of the existence of a domestic remedy runs counter to the interests of those claiming to be victims of violations. It acknowledges the strength of feeling expressed by some of the applicants. However, the argument that it would be galling to have recourse to authorities in northern Cyprus cannot be given decisive weight – against the background of conflict and hostility, similar argument might be raised in respect of any official body or authority on the Turkish mainland, or indeed by any victim of a violation who is faced with the prospect of asking for redress from a State which has been responsible for the injury suffered. The fact that applicants live outside the occupied area furnishes no reason in principle why they should not be expected to apply to a “TRNC” body where it can be demonstrated that a remedy is both practicable and normally functioning.

The Court notes that the IPC is made up of five to seven members, two of whom are independent international members and that similar rules apply as to senior members of the judiciary in the “TRNC” vis-à-vis appointment and termination, and conditions of employment. Persons who occupy Greek-Cypriot property are expressly excluded. While the applicants and intervening Government asserted that no-one in the north could claim to be unaffected by the widespread problem, this general allegation is insufficient to cast doubt on the composition. Nor is it persuaded that the illegal nature of the regime under international law and the ongoing presence of Turkish military personnel or the appointment of members of the Commission by the “TRNC” President removes any objective impartiality or independence from the IPC in carrying out the functions imposed upon it under Law 67/2005. No specific, and substantiated, grounds concerning any lack of subjective impartiality of members of the IPC have been put forward.

The court then dismisses the claims of the refugees from Cyprus and basically tells them to avail themselves of the remedies offered by Turkey and the TRNC, which the court has judged to be fair.

The Court finds that Law 67/2005 provides an accessible and effective framework of redress in respect of complaints about interference with the property owned by Greek Cypriots. The applicant property owners in the present cases have not made use of this mechanism and their complaints under Article 1 of Protocol No. 1 to the Convention must therefore be rejected for non-exhaustion of domestic remedies. It is satisfied that Law 67/2005 makes realistic provision for redress in the current situation of occupation that is beyond this Court’s competence to resolve.

The European Court of Human Rights only has jurisdiction within Europe, so this decision doesn’t apply outside the borders of states which have ratified the treaty establishing the court. But then again – it does. International law is heavily influenced by many sources – decisions like

this included. Previous understanding on the “right of return” has been that refugees, no matter the length of time of the conflict, have a right to return to their homes. In the Cypriot case this is outlined in a number of United Nations Security Council and UN General Assembly resolutions. But the court has said essentially, that when an alternative remedy is available which is judged to be fair and impartial then refugees must take it – they cannot avail themselves of the court to force ownership of property or physical return to the lands from where they fled. And the IPC is not an open-ended recourse – the court notes that it will no longer take cases after Dec 2011 (37 years after the Turkish invasion).

I believe this decision will have enormous consequences for the Cypriot case. Up until now the government of the Republic of Cyprus has encouraged its citizens to avail themselves of the European system of justice and had previously won a number of cases on the issue of abandoned properties. This had led to a situation where the government isn’t negotiating with the TRNC in good faith because it knows the deal it has currently is better than any deal it may get – this has caused an asymmetrical balance of power between the two sides and meant one side, the Greek-Cypriot side, is always ascendant against the other. This is one reason negotiations have dragged on and on and on for over 30 years and why the Greek-Cypriot side decisively rejected the Annan plan in a referendum in 2004.

Reaction, predictably, has been outrage on the Greek-Cypriot side with many wondering what step they take now. Do they wait for a political settlement or do they apply to the IPC for compensation? The Turkish side has been far more muted in its reaction, primarily because if every Greek Cypriot applied to the IPC for compensation for their properties the commission would quickly be overwhelmed and the amount of compensation awarded would likely overwhelm Turkey’s ability to pay.

The decision will have consequences outside Europe as well and will be closely studied in Israel, where the issue of the “right of return” for Palestinians is highly controversial. Its applicability to other outstanding conflicts, like Morocco’s occupation and annexation of the Western Sahara, will be examined. This decision may act as a force to change the negotiating positions of many actors in many conflicts and lead to forward motivation in negotiations on all sides.

Now you know what I think. What do *you* think?

Shane Hensinger