

# EMBARGOED! PROPERTY ISSUE FACT SHEET

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Despite the lack of a political resolution in Cyprus, the property issue continues to rage on. There has been a number of high profile Court cases, which have a direct impact on this issue. This fact sheet is an overview of the current legal position to help you better understand your rights and choices.

## ISSUE: How does the law balance title based claims with the claims of current users?

*If you own land in the Turkish Republic of Northern Cyprus (TRNC) that had Greek deeds in 1974, what are your current rights? As far as the Greek Cypriot government are concerned, the pre-1974 title holder is the only party with any legal right, and is entitled to demand property rights including restitution. Are these the only legal rights which are recognised? A number of cases on this issue has now passed through the European Courts, and below we summarise the key points you need to know:*

**LOIZIDOU v TURKEY:** This was the first test case concerning 'human rights violations' in the TRNC to go to the European Court of Human Rights (ECHR). Loizidou claimed Turkey was responsible for violations because it exercises effective control over the 'territory' of the TRNC. This was the Court's way of avoiding recognition of the TRNC. Turkey argued that the application was out of time, and that the Turkish Cypriot Constitution declared that the title for the property had now transferred to the TRNC state.

The ECHR would not analyse the Turkish Cypriot Constitution, as it did not accept the existence of the TRNC. The Court decided Loizidou retained the legal title to the land. This case bolstered Greek Cypriot beliefs that the TRNC does not exist as a state, and further, they remain the legal owners of property abandoned in 1974.

**THE ORAMS EXAMPLE:** This is the most publicised case on Cypriot property rights. At this time, Court appeals are still pending. However, this case has developed in significantly different ways to the Loizidou case above, and the Demopoulos case below. This was the first case of a Greek Cypriot suing a named person (the Orams), rather than Turkey. Further, the case was pursued through the Court of the Republic of Cyprus, as a matter of "trespass".

Mr. Apostolides claimed that the Orams were trespassing on the land his family left behind in 1974. The Greek Cypriot Court agreed, ordering the return of the property to its original state in 1974, thereby requiring the demolition of the holiday home that the Orams had since built on the land, after purchasing it

in good-faith from a Turkish Cypriot. The Greek Cypriot Court disregarded all other transactions which had occurred on the land after 1974 as it regarded them as illegal and also deemed that the Orams had no rights with respect to the property.

There are several problems with this initial hearing. Firstly, the Orams were not represented at the hearing. Secondly, they were vilified in the press as they were accused of "stealing" the property. Thirdly, the Republic of Cyprus Court did not consider the full facts and take a balanced approach to the rights of both parties. The order to demolish the building is disproportionate as it far outweighs the value of the land in its original state. Finally, the Orams face the threat of contempt of Court if they do not comply with the decision.

The Orams are currently pursuing a claim in the European Court of Human Rights, challenging both the hearing and the decision. However, simultaneously Mr Apostolides, knowing that his judgement would not be enforced in the TRNC, and that the Orams had property in the UK, pursued the claim through the English Court under an EU directive which provided a process to transfer the Greek Cypriot judgment to the UK for enforcement purposes.

Initially the English Court concluded that it would not enforce the decision of the Republic of Cyprus. The case then went to the Court of Appeal. The Court asked the European Court of Justice to clarify European Union law regarding enforcement of decisions from foreign jurisdictions. The European Court of Justice does not look at the fairness of a decision, but rather the procedural elements of EU law, and as such recommended that the judgement be enforced, as European Union countries are required to recognise the decisions of the Courts in other European Union countries. The Court of Appeal followed the European Court's advice, and the Orams now face losing their home in the UK.

**THE IMMOVEABLE PROPERTY COMMISSION (IPC):** After 1974, the TRNC took over all Greek Cypriot property and redistributed it according to laws based on the logic of an 'eventual' global land exchange as a method of resolving the property issue. No legal mechanism existed for a Greek Cypriot to make a property claim in the TRNC for land they had left behind, until the law 72/2005. The IPC accepts applications by pre-1974 Greek Cypriot owners and is empowered to award

them: compensation, exchange or restitution. It also allows for consideration to be made of third party users, refugees, public or military use of the land. The IPC finds the funds necessary for each case, and does not financially effect the current user of the property. If an applicant accepts compensation rather than restitution within the IPC framework, then the complainants' ownership rights are extinguished.

### **Why was the Commission established?**

In the Xenides-Arestis case (again a case of a Greek Cypriot pursuing a claim against Turkey), the ECHR provided the TRNC with a method to deal with Greek Cypriot claims on the island, and from this decision, the IPC was established. The ECHR did not think it was necessary or reasonable to consider the 1,500 Greek Cypriot cases submitted, all based on similar property issues on the island, and required the establishment of an 'effective domestic remedy' in the TRNC in compliance with the rules of international law. The structure and legitimacy of the IPC has subsequently been tested in the Demopoulos case (see below).

As of 28 May 2010, 539 applications have been lodged with the IPC and 105 of them have been concluded through 'friendly' settlements and four through formal hearing. The Commission has paid GBP 42,680,100 to the applicants as compensation. Moreover, it has ruled for exchange and compensation in two cases, for restitution in one case and for restitution and compensation in five other cases. In one case it has delivered a decision for restitution after the settlement of the Cyprus Issue, and in one case it has ruled for partial restitution.

**THE DEMOPOULOS DECISION:** The case concerned 8 complaints made directly to the ECHR by Greek Cypriot owners of land in the TRNC, who were claiming that they had been deprived of their property rights since August 1974. The claims were brought against Turkey, rather than a particular person, in a hope that the ECHR would Order restitution and compensation for loss of use. Relying on Loizidou, the claimants tried to claim that the IPC was invalid, as the TRNC is unrecognised, and therefore any legal institution within it could not be recognised. Further, they argued that Greek Cypriots should not be forced to apply to a regime they do not recognise or to rely on mechanisms exercised in the "occupied territory".

The Court held that the IPC provided an accessible and effective redress to Greek Cypriot land claims. However, the Court had to state that the remedy is provided by Turkey, not the TRNC. This decision effectively sent the backlog of 1500 cases back from Europe to Cyprus. If an applicant chooses not to apply to the IPC before applying to the ECHR, then they have not exhausted all domestic remedies, and as such their application will be inadmissible. Those claimants who are unwilling to use the IPC are advised by the ECHR to wait for an eventual political solution. Should an applicant not be satisfied with the

IPC ruling, they can appeal to the high court of the TRNC and ultimately to the ECHR. Though this is a great development for Cypriot land issues, the decision **DOES NOT** constitute, in and of itself, recognition of the Turkish Republic of Northern Cyprus. The ECHR also accepted that third party rights over land that pre-1974 was Greek Cypriot owned can arise and further, that there is no blanket right for restitution – compensation can be payable instead. In two subsequent recent cases (Asproftas and Petrakidou), the ECHR ruling has followed the principles established in the Demopoulos case.

The impact these ECHR cases will have on the Orams case has not been tested. If another Orams type case arises in the UK or elsewhere in the EU, the respondent can argue that the Orams decision should not be followed.

### **Turkish Cypriots making claims in the Republic of Cyprus**

After 1974, the Republic of Cyprus established a 'Guardian of Turkish Cypriot Property' which has basically taken over all ownership rights of Turkish Cypriots. This 'Guardian' will exist until there is a political solution on the island. This serves to deprive and suspend all property rights belonging to Turkish Cypriots. This problem is further exacerbated by the 'Guardian' being inefficient and even allegedly corrupt with regard to the protection of Turkish Cypriot properties.

The Republic of Cyprus recognises that its existing guardian laws infringe the human rights of Turkish Cypriots who own land in the South of the island. As a result of the increasing number of Turkish Cypriot cases brought before the ECHR and the recent settlement reached in the case of Sofi, they are currently amending these laws, and as a consequence, conceding that at present there is no effective domestic remedy for Turkish Cypriot claims.

*Please remember this is just a guide to the law. If you have any queries about your land and your rights, please seek legal advice.*

If you would like more information or to get involved with Embargoed! as a volunteer please contact us at: [mail@embargoed.org](mailto:mail@embargoed.org) or call us on **07806 932966** or write to:

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