A

الأمم المتحدة

الجمعيـــة العامـــة

Distr.
GENERAL

A/HRC/10/G/12
30 March 2009

ARABIC
Original: ENGLISH

مجلس حقوق الإنسان
الدورة العاشرة
البند ٣ من جدول الأعمال

# التقرير السنوي لمفوضة الأمم المتحدة السامية لحقوق الإنسان، وتقارير المفوضية السامية والأمين العام

## مذكرة شفوية* مؤرخة ٢٦ آذار/مارس ٢٠٠٩ وموجهة إلى مفوضيـــة الأمم المتحدة السامية لحقوق الإنسان من البعثة الدائمة لجمهورية تركيا

**جنيف، ٢٦ آذار/مارس ٢٠٠٩**

تهدي البعثة الدائمة لجمهورية تركيا لدى مكتب الأمم المتحدة بجنيف وسائر المنظمات الدولية في سويسرا تحياتها إلى مفوضية الأمم المتحدة السامية لحقوق الإنسان ويشرفها أن تحيل طيه نسخة من الرسالة التي وجههـــا الأستاذ المشارك، السيد تورغاي أفجي، نائب رئيس الوزراء ووزير الخارجية لجمهورية شمال قبرص التركية والتي تبين آراء القبارصة الأتراك بشأن تقرير الأمين العام المؤرخ ٥ آذار/مارس ٢٠٠٩ والمقدم إلى الدورة العاشرة لمجلس حقوق الإنسان تحت عنوان "مسائل حقوق الإنسان في قبرص" (A/HRC/10/37).

وستكون البعثة الدائمة لجمهورية تركيا ممتنة لو تم تعميم هذه المذكرة ومرفقيها بوصفهما وثيقة رسمية من وثائق الدورة العاشرة لمجلس حقوق الإنسان.

وتنتهز البعثة الدائمة لجمهورية تركيا هذه الفرصة لتعرب من جديد لمفوضية الأمم المتحدة السامية لحقوق الإنسان عن أسمى آيات تقديرها.

---

* صدرت في المرفقين كما وردت وباللغة التي قُدِّمت بها فقط.

**Annex I**

Excellency,

I have the honour to refer to the Report on the "Question of human rights in Cyprus" dated 5 March 2009 (A/HRC/10/37) which has been submitted to the 10th session of the UN Human Rights Council held in Geneva, pursuant to decision 2/102 taken at its 29th meeting on 6 October 2006 regarding the "Reports and studies of mechanisms and mandates" and to bring the following considerations to your kind attention:

At the outset, I wish to underline the fact that the references in the report to the so-called "Republic of Cyprus", "Government of the Republic of Cyprus", "the Education Minister of the Government of Republic of Cyprus", "Cypriot National Youth Agency", and the "Supreme Court of the Republic of Cyprus" reflect neither the realities nor the legal position in Cyprus. Ever since the forcible expulsion of the Turkish Cypriot co-founder partner from all organs of the 1960 partnership Republic, there has been no constitutional Government representing both peoples of the island. The Turkish Cypriots did not accept the forceful takeover of the partnership State by the Greek Cypriot side and, through its decisive resistance, prevented the Greek Cypriot side from extending its authority over the Turkish Cypriot people. Hence, since December 1963, there has not been a joint central administration in the island, capable of representing the whole of Cyprus, either legally or factually. Each side has since ruled itself, while the Greek Cypriot side has continued to claim that it is the "Government of Cyprus".

We have taken note of the remarks in the prologue that, "In the absence of an Office of the High Commissioner for Human Rights (OHCHR) field presence in Cyprus or any specific monitoring mechanism, the OHCHR relied on a variety of sources with particular knowledge of the human rights situation on Cyprus for the purposes of the present report". Indeed, particularly documents of European bodies have been used extensively on the issues of property claims and missing persons unfortunately giving the false impression that Turkey is to be held accountable on these issues and that, therefore, Turkey and not the Turkish Cypriot side is the counterpart of the Greek Cypriot administration. This is not only erroneous and unacceptable but also contradicts the UN parameters. The repeated references to Turkish authorities (rather than Turkish Cypriot authorities) and the so-called "Government of the Republic of Cyprus" indicate that the principle of the political equality of the two sides has been seriously undermined.

As regards the "Overview" section of the Report, it is observed once again that the present Report does not include a section on Your Excellency's mission of good offices. Hence, the present Report conveniently sidesteps the overall political picture and developments on the island, thus failing to reflect a full perspective on the question of human rights in Cyprus. Sadly, the Greek Cypriot rejection of the UN Plan for a comprehensive settlement and the ensuing impasse has all but been forgotten and the inhuman policy of isolation being employed by the Greek Cypriot administration against the Turkish Cypriot people in all fields is not given due emphasis.

H.E. Mr. Ban Ki-moon
Secretary-General of the
United Nations
New York

As you will recall, after the overwhelming rejection by the Greek Cypriot people of the comprehensive settlement of the Cyprus problem [Annan Plan], which was approved by the Turkish Cypriot people by 65% of the votes, in his report of 28 May 2004 (S/2004/437) the former Secretary-General addressed the unjust isolation of the Turkish Cypriot people and stated that "in the aftermath of the vote, the situation of the Turkish Cypriots call for the attention of the international community as a whole, including the Security Council". He underlined the fact that the "Turkish Cypriot vote has undone any rationale for pressuring and isolating them" and appealed to the UN Security Council to "give a strong lead to all States to cooperate both bilaterally and in international bodies to eliminate unnecessary restrictions and barriers that have the effect of isolating the Turkish Cypriots and impeding their development".

It is most disappointing that while your predecessor's above-mentioned report as well as Your Excellency's report of 3 December 2007 (S/2007/699) dwelt on the unjust isolation of the Turkish Cypriot people, a commensurate approach has not been taken in the present human rights report. The restrictions imposed by the Greek Cypriot side violating the human rights of Turkish Cypriots in various fields, such as the right to freely trade and travel, are continuing and efforts to rectify this situation by many parties are still impeded by the Greek Cypriot side. It is difficult to comprehend how this most blatant, systematic and all-encompassing violation of human rights on the island has not been addressed in the Report apart from observations concerning the restrictions in the education sphere (paragraph 20) and mention of the economic rights of Turkish Cypriots in paragraph 23 where it is noted that the EU aid program for the Turkish Cypriot side continues but that the Direct Trade Regulation prepared by the European Commission is still pending adoption in the Council of Ministers of the European Union.

As regards the "Human Rights Concerns" section of the Report which reiterates that "The persisting division of Cyprus has consequences in relation to a number of human rights issues on the whole island..." (paragraph 2), one must qualify that the history of human rights violations in Cyprus goes back a long time. It started in 1963 when the Greek Cypriots launched an organized attack against the Turkish Cypriots throughout the island in order to realize their dream of annexing the island to Greece (ENOSIS). It is noteworthy that the Greek Cypriot administration's present policy of applying an all-embracing inhuman embargo against the Turkish Cypriot people originated at that point. It should be recalled that as early as 10 September 1964 in his report to the UN Security Council the then UN Secretary-General described the inhuman restrictions imposed upon the Turkish Cypriot people by the Greek Cypriot authorities, under the usurped title of the "Government of Cyprus", as being so severe that it amounted to a "veritable siege" (UN doc. S/5950).

Although in paragraph 3 attention is drawn to the increased number of crossings since 2003 and the "highly symbolic" opening of the Lokmacı (Ledra Street) crossing point in April 2008, the present Report does not adequately address the issue of trade between the two sides within the context of the Green Line Regulation. Hence, the Report fails to address the difficulties encountered by the Turkish Cypriots in the area of intra-island trading due to the Greek Cypriot side's obstructionist policies. Contrary to the Turkish Cypriot practice of allowing unhindered access to all Greek Cypriot vehicles and the EU Commission's view that unless restrictions were lifted the Green Line Regulation would be meaningless, the Greek Cypriot administration is still preventing Turkish Cypriot commercial vehicles from transporting goods and people across the Green Line on the pretext of refusing to recognize driving licenses issued

in Northern Cyprus. Limited in both scope and value, the Green Line trade, which the Greek Cypriot administration farcically claims to be an adequate tool for the Turkish Cypriot economy, is totally inadequate for reducing the economic disparity between the two sides and for progressing towards trade convergence and reunification. Furthermore, the Green Line Regulation covers only the movement of goods and people from North to South Cyprus while the services dimension remains underdeveloped. What constitutes bigger urgency for the Turkish Cypriot people is the adoption of the Direct Trade Regulation, which would be a positive step towards eliminating the restrictions and the creation of the necessary conditions for the economic and social development of the North.

A serious shortcoming of the Report in connection with discrimination and racism against Turkish Cypriots has been the failure to mention the repeated cases of maltreatment of the Turkish Cypriot people by the Greek Cypriot people which have intensified in the last couple of years. The most appalling fact regarding the matter is that the Greek Cypriot authorities by failing to take action against the perpetrators condone these incidents. A glaring case has been the racist attacks perpetrated by the ultra- nationalist group called “Hrisi Avgi” (Golden Dawn) in November 2006 at the English School in South Nicosia targeting Turkish Cypriot students. The said group appears to persist in reviving anti-Turkish sentiment. The incident of November 2006 was followed by another incident at the School on 25 February 2008 involving the writing of graffiti entailing fascist slogans and insults against the Turkish Cypriots.

As regards the freedom of movement on the island (paragraph 4), one should not lose sight of the geopolitical reality of bizonality and the fact that there is a long standing political dispute on the island as evident by the fact that a UN Peace-keeping Force has been present on the island for the past 44 years. It should not be forgotten that military zone prohibitions are commonplace even in most democratic societies. Moreover, the same prohibitions are in force in South Cyprus so it is curious why prohibitions in regard to the military zones in the Southern part of the island are not considered restrictions to the freedom of movement on the island.

In paragraph 4, reference to the so-called restrictions on UNFICYP`s movement is erroneous. There has always been good coordination and cooperation between UNFICYP and the Turkish Cypriot Security Forces on such matters. During the reporting period, relevant Turkish Cypriot authorities have not been informed by UNFICYP of problems pertaining to the movement of UN personnel. Our authorities stand ready to consider any request that UNFICYP might have in this regard. It should be pointed out that denying the existence of the Turkish Cypriot authorities and institutions and referring to Turkish Forces rather than Turkish Cypriot Security Forces is unacceptable.

Furthermore, in paragraph 4 the reference to villages in Northern Cyprus without indication of their Turkish names is unacceptable. In this context, it should also be reminded that Cyprus is the common home of the Turkish Cypriots and the Greek Cypriots where a great number of villages enjoyed both Greek and Turkish names.

As for paragraph 7, which deals with the criminal activities through the buffer zone, it should be reiterated that over the years we have repeatedly expressed our readiness to establish contacts at all levels and to cooperate with the Greek Cypriot side in the fight against smuggling, drug trafficking, illegal immigration, human trafficking and similar illicit activities but the Greek Cypriot side has always shied away from such cooperation on the grounds that it would amount to recognition of Turkish Cypriot institutions. However, since last April, cooperation on crime

prevention and issues related to criminal matters as well as trafficking of persons are being taken up by the *Technical Committee on Crime and Criminal Matters* in line with the mandate given to the Committee by the two Leaders and the two sides have in the process agreed to establish a Sub-Committee on the Exchange of Information and Intelligence. We trust that the exchanging of information and intelligence in this area will contribute to reducing criminal activities through the buffer zone.

I wish to underline the fact that one of the most fundamental issues in the Cyprus question is the property issue (paras. 9-14). In view of the reciprocal property claims of the two sides, the matter is under discussion at the negotiation table. The two leaders, who are negotiating under UN auspices, have completed the preliminary consideration of the heading of property rights and moved on to the next heading, namely the EU matters. The fact that the property disputes continue to be brought before the European Court of Human Rights (ECHR) although there is a mechanism (Immovable Property Commission, IPC), established according to ECHR guidelines, to deal with these matters in Northern Cyprus, is indicative of the Greek Cypriot effort to shift UN established parameters in their favour and thereby prejudge the outcome of negotiations on the matter. It must be noted in this context that the reaction of the Greek Cypriot administration to the establishment of the IPC has not been encouraging. Sadly, the Greek Cypriot authorities are attempting to undermine an effective legal instrument which conforms fully with relevant international norms. To this end, the Greek Cypriot side has disclosed the names of the Greek Cypriot applicants in the press under a list entitled “shame list” and it has threatened to take legal action against potential applicants. Pursuant to the Tymvios case (for details refer to UN document A/HRC/7/G/16 of 1 April 2008) most recently, the Greek Cypriot leader Mr. Christofias discharged a member of the Working Group dealing with the property issue on account of his application to the Immovable Property Commission in North Cyprus for the brokering of a friendly settlement with respect to property he abandoned in 1974. (For a detailed account of the property issue see the Annex)

It is unfortunate to observe the reference, in paragraph 13, to the “demolition of Greek Cypriot houses in the North”. In this context, I would like to bring to Your Excellency’s kind attention that the Turkish Cypriot side’s detailed explanation regarding this issue has already been conveyed by the relevant authorities of our Ministry to UNFICYP through the letters of 5 June and 19 June 2007. Therefore, I will refrain from giving full particulars. Yet suffice to say, the cleaning up of old, vacant and partly demolished buildings is being carried out in accordance with the legal duty and responsibility of the Ministry of the Interior in creating a safer and healthier environment for all inhabitants. In this respect, all buildings which constitute a threat to the safety of the villagers had been identified and included in this effort. It should be noted that this work is not only carried out in the Karpaz region but throughout the whole of Northern Cyprus wherever it is required. All the work that has been done has been undertaken for the sole purpose of public safety with no particular focus on the owners of such properties, be they Turkish Cypriot or Greek Cypriot. It should be stressed that prior to demolishing such buildings our relevant authorities have contacted the owners, heirs or relatives and in accordance with the law gave due notice to them. It is unfortunate that the Greek Cypriot administration is misrepresenting and exploiting, for political propaganda purposes, a routine clean-up process required by law and carried out for the safety of all residents of the Dipkarpaz area, Greek Cypriot and Turkish Cypriot alike. Once again clarification is being sought from Turkish authorities, knowing only too well that the competent authority in this regard is the TRNC Ministry of the Interior.

A serious omission in the Report is the fate of the Turkish Cypriot houses within the Greek Cypriot controlled areas which have been demolished and razed to the ground. A noteworthy case in this regard is what has unfolded in Yağmuralan (Vroisha) village in South Cyprus. Yağmuralan Village came to attention as a result of the legal struggle initiated by the former residents of the

village against the Greek Cypriot administration. The Association of Yağmuralan was formed in the UK whose members are Turkish Cypriots who used to be residents of the village. The Association has filed a complaint against the Greek Cypriot administration on the grounds that their houses and hundreds of acres of vineyards and orchards have been plundered and demolished and turned into forest areas. The members of the Association made an application to the so-called "Interior Ministry of Cyprus" via the "Cyprus High Commission" in London seeking to be compensated for their loss. In response, the Greek Cypriot administration referred to the law 139/1991 which has been mentioned hereinabove.

We consider the reference to the construction sector in North Cyprus in paragraph 13 of the Report to be inappropriate. As one can recall, the issue of reciprocal property claims would have been settled within the context of the Annan Plan, had it not been for its rejection by the Greek Cypriots. It should be known that in the absence of a comprehensive settlement and in view of the ongoing unjust isolation such a reference to the construction sector, which plays an important role in our economy, amounts to lending support to the Greek Cypriot aspiration of keeping the Turkish Cypriot economy under constant pressure.

The Report deals with the issue of missing persons in paragraphs 15-17, in this connection reporting that "the Secretary-General has noted his gratitude that the CMP continues its humanitarian work unhindered and in a de-politicized manner and urged all parties concerned to take every possible action in order to speed up the exhumation process". As is the case with the issue of property rights once again, Turkey is ultimately held responsible on the issue of missing persons as reference is made to a decision of the Committee of Ministers of the Council of Europe calling upon Turkey "to take additional measures to ensure that the effective investigations required by the judgment are carried out" (para. 17). This kind of approach which attempts to bypass or override Turkish Cypriot authorities and institutions thereby undermining the political equality of the Turkish Cypriot side, clearly does not augur well either for the resolution of the issues at hand or for the prospects of a comprehensive settlement in the island.

As it will be recalled, the Committee on Missing Persons (CMP) was established in 1981 by the UN as a tripartite committee composed of a Turkish Cypriot, a Greek Cypriot and a Third Member appointed by the UN Secretary-General, to address the problem of the missing. As such, it must be evident that Turkey is not a party to the issue of missing persons in Cyprus, but fully supports the work of the CMP as it equally desires the resolution of this humanitarian issue.

Moreover, the Greek Cypriot side presents the humanitarian issue of missing persons as only affecting Greek Cypriots. However, this is misleading since it equally affects the Turkish Cypriot people. It should be stressed that the question of missing persons in Cyprus dates back to 1963. Between the years of 1963-1974 around 502 Turkish Cypriots went missing after being abducted or detained by armed agents of the Greek Cypriot administration. All of them were innocent civilians, one-fourth comprising women and children, who were abducted from their homes, work places, hospitals or roads by the Greek Cypriot police and militia, who were then murdered and thrown into wells or mass graves.

While we are still awaiting the opening of a Turkish primary school in Limassol, it is disappointing to see that in paragraph 19, the number of Greek Cypriot teachers at Greek Cypriot schools in the Karpaz is being made an issue without due attention to the existing student-teacher ratio. It should be noted that there are 19 teachers and 2 headmasters for a total of 48 students at the primary and secondary levels.

It is disappointing to see that in paragraph 21 reference is only made to the rejection of the Cyprus Turkish Teachers' Union's lawsuit by the so-called "Supreme Court of the Republic of Cyprus". The report, unfortunately, fails to urge the Greek Cypriot administration to honour its decade-old commitment regarding establishment of a separate Turkish Cypriot school in Limassol (see Secretary-General's reports S/96/411 and S/2005/743) in order to meet the educational needs of the Turkish Cypriot children living in Southern Cyprus, whose number is well over the Greek Cypriot children living in Northern Cyprus and, thus, reinforces the Greek Cypriot leadership's intransigent position which violates a fundamental human right, namely the right to education in one's mother tongue. This particular incident is only one example that good-willed unilateral steps taken by the Turkish Cypriot side are not reciprocated by the Greek Cypriot side.

We welcome that paragraph 20 of the Report addresses the Turkish Cypriot students' continuing lack of access to the European Union exchange and educational programs. This no doubt constitutes a violation by the Greek Cypriot administration of the fundamental right to education of the Turkish Cypriot students whose plight continues despite efforts to rectify the situation. Of particular concern in this context is the need to find the modalities to allow the participation of the Turkish Cypriot higher education institutions in the Bologna process. Otherwise, with the completion of the Bologna process in 2010, diplomas issued by universities will no longer be recognized in Europe.

As for the matter of the preservation of cultural heritage (paragraph 22), attention must be drawn to the insincerity of the Greek Cypriot side on the matter. It should be underlined that the protection of cultural heritage is of great importance to the Turkish Cypriot side since the cultural heritage of Cyprus, whether in the North or in the South, emanates from the diverse and rich cultures and civilizations which have populated the island throughout history and it is the common heritage of humanity regardless of its origin which should be protected and preserved. The relevant competent authority in the TRNC, namely the Department of Antiquities and Museums, works diligently to realize these objectives with limited resources.

However, the Greek Cypriot administration which attempts to present itself as the champion of the conservation of cultural heritage continues to show utter contempt for the Turkish-Muslim heritage in Southern Cyprus, where Ottoman Turkish cultural and religious monuments including mosques, baths, fountains and cemeteries are under threat of destruction. A study carried out in 2006 by the Political and Research Office of the Presidency of the Turkish Republic of Northern Cyprus, clearly revealed that 16 of the mosques out of 106 located on the Greek Cypriot side of the island have been totally ruined, while 61 mosques remain in a state of neglect. While claiming to care very much for the cultural heritage of the island, the Greek Cypriot administration, at the same time, blocks the passage of aid to the Turkish Cypriot authorities in the North, although it is there that so many of the cultural monuments lie. The Greek Cypriots go to great lengths to prevent international organizations or private institutions from taking an interest in or providing assistance to the TRNC. They even try to prevent archaeologists from conducting research in North Cyprus. So far international bodies, including UNESCO, have failed in its task to provide any direct assistance of any kind to relevant Turkish Cypriot authorities as a result of the Greek Cypriot political pressures exerted with a view to preventing the North from obtaining the means to provide sufficient care. The Turkish Cypriot side believes that the protection of cultural heritage should not be held hostage by the continuation of the political situation on the island for which the Turkish Cypriot side cannot be held responsible.

In the same paragraph it is alleged that the Turkish Cypriot side denied the use of the Yeşilırmak (Limnitis) crossing point to the members of the Greek Cypriot community of Kato Pyrgos who wished to attend annual prayers at Ayios Mamas Church, in Güzelyurt (Morphou). It is hard to comprehend the understanding that equates the UN supervised crossing of the Turkish Cypriots for an annual

commemorative event into Erenköy (Kokkina), an uninhabited area accessible only via Yeşilırmak, with that of Greek Cypriot crossing into the populated areas of North Cyprus for an annual prayer in St. Mamas Church through Yeşilırmak without any registration, despite the fact that Greek Cypriots could have used the Bostancı (Zodya) crossing point, which is in close proximity to St. Mamas Church, Güzelyurt (Morphou).

With respect to paragraph 23, it is most disappointing to observe that the very UN parameter of political equality is trampled upon by the UN itself. The report now appears to be employing EU language in view of the reference to Northern Cyprus as “those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control”. This is totally unacceptable and is not conducive to a settlement.

In the same paragraph, there is reference to the difficulties in relation to the Financial Aid and Direct Trade Regulations, the latter of which would have the effect of significantly alleviating the embargoes imposed on the Turkish Cypriots. There is, however, no mention of the fact that it is due to the concerted efforts of the Greek Cypriot side that the future of the Direct Trade Regulation remains uncertain and will do so as long as the international community fails to point a finger at the Greek Cypriot administration.

As the party which has demonstrated its firm commitment to the resolution of the Cyprus issue on the basis of political equality, we have noted with pleasure the observation in the “Conclusion” section of the Report that "it is hoped … the new momentum to achieve a comprehensive settlement of the Cyprus problem will provide avenues to improve the human rights situation on the island …”. However, for reasons that must be evident from our foregoing observations, in our opinion there is a disparity between the content and conclusion of the Report in the sense that such reporting which does not uphold the principle of the political equality of the two sides and fails to hold the Greek Cypriot side responsible for its application of inhuman restrictions, will not contribute to the search for a comprehensive settlement.

We hope and trust that the views expressed above will be duly taken into consideration and that sensitivity will be shown towards the rights and interests of the Turkish Cypriot people in the future reports; if indeed the current process of reporting on the human rights situation on the island is to continue in spite of its exploitation by the Greek Cypriot administration at the Human Rights Council.

In conclusion, I would like to reiterate that, as the Turkish Cypriot side, we remain fully committed to the comprehensive settlement of the Cyprus issue under Your Excellency's mission of good offices and on the basis of the UN established parameters and body of work. Taking this opportunity, I would like to express my hope and trust that under your able guidance, efforts to find a comprehensive settlement would come to fruition without further delay.

Please accept, Excellency, the assurances of my highest consideration.

Doç. Dr. Turgay Avcı
Deputy Prime Minister and
Minister for Foreign Affairs

## Annex II

PROPERTY ISSUE

Property Issue:

One of the most fundamental issues in the Cyprus question is property. Contrary to the Greek Cypriot allegations, the property issue in Cyprus did not come about in 1974, but first arose in 1963 when almost half of the Turkish Cypriots were forced to abandon their homes at gunpoint and took refuge in what came to be known "Turkish Cypriot Enclaves". It should be stressed that in addition to Greek Cypriots leaving property in the North, Turkish Cypriots also left considerable amount of property in the South, most of which were "taken" by the Greek Cypriot administration, leaving no possibility for restitution, exchange and/or compensation for the Turkish Cypriots for the use and enjoyment of their properties.

The Greek Cypriot administration considers that the settlement of the property issue for Turkish Cypriots will take place upon settlement of the Cyprus problem as a whole and that the exercise of property rights by Turkish Cypriots is suspended in the meantime. Public statements from Greek Cypriot officials also discourage Turkish Cypriots from applying to the ECHR.

On the other hand, when the issue deals with Greek Cypriot property rights in the North, the administration not only encourages individuals to apply and ask for an immediate exercise of their property rights, but also actively participates as an intervening party to the applications of Greek Cypriot individuals as well as taking a harsh line for the execution of the inter-state application and other applications that have reached this stage.

So far, the Greek Cypriot administration has been denying exercise of property rights for Turkish Cypriots. Until 1991, the Government used "requisition" as the means to deny possession to all Turkish Cypriots. The Turkish Cypriots were not paid any form of compensation for requisition. For those Turkish Cypriot properties that are allegedly subject to compulsory acquisition, there is no order of compulsory acquisition that the Turkish Cypriots were informed about, nor were the Turkish Cypriots paid any compensation for such compulsory acquisition.

Since 1991, Law No. 139/1991 entitled "Administration of Turkish Cypriot Properties in the Republic and Other Related Matters" has vested the administration of all Turkish Cypriot properties in Southern Cyprus (except those belonging to Turkish Cypriots who have their "normal residence in the areas controlled by the Republic") in the Minister of the Interior as "Custodian" (also referred to as "Guardian") and conferred on him certain powers and functions to be exercised "during the abnormal situation and until the final settlement of this matter is achieved". The termination of this administration is possible only by a decision of the Council of Ministers to be published in the Official Gazette (sections 2 and 3).

Firstly, the residence requirement in Law No. 139/1991 denotes that any Turkish Cypriot who resides in North Cyprus or abroad cannot exercise any proprietary rights in respect of their possessions in South Cyprus because the "Custodian" has stepped into their shoes. Secondly, those Turkish Cypriots who are non-resident in southern Cyprus have to fulfill the residence requirement before they can successfully commence any legal proceedings in Southern Cyprus in order to gain possession of their properties. Thirdly, the Law does not foresee prompt payment of any compensation for loss of use until the settlement of the Cyprus problem i.e. as long as the abnormal situation and until the final settlement of this matter. Fourthly, any challenge by the Turkish Cypriot owners to get restitution, compensation for their properties or against this Law has been rejected by Greek Cypriot courts (See, for example, *Ali Kamil and others v. The Minister of the Interior as Guardian of Turkish Cypriot Properties* (Case No. 133/2005, 19 January 2007),

*Solomonides v. the Republic and the Ministry of Interior acting as the Guardian of Turkish Cypriot Properties* (Case No. 113/03) *Ahmet Mulla Suleyman v. the Republic* (Case No. 99/2005) *Ozgun Ahmet Mumtaz (Soyer) v. the Republic*, (Case No. 5825/05)), and *Meryem Kaya v. the Police and the Ministry of Justice and Public Order of the Republic* (Case No. 61/2008).

It is clear that there are not any effective domestic remedies by way of compensation (including loss of use) or restitution for interference with the applicants' property rights. Such interference which amounts to complete negation of the applicant's property rights is still continuing.

According to the well-established jurisprudence of the Court, non-payment of compensation for loss of use to owners is a violation of Article 1 of Protocol No. 1 which is continuing (see, *mutatis mutandis*, *Loizidou v. Turkey*, (judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, §§ 63-64), *Cyprus v. Turkey* ([GC], (no. 25781/94, ECHR 2001-IV), *Demades v. Turkey* (no. 16219/90, § 46, 31 July 2003), *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey* (no. 16163/90, § 31, 31 July 2003) and *Xenides-Arestis v. Turkey* (no. 46347/99, § 32, 22 December 2005)).

Hence, the continuing and total denial of access to their property without any compensation as part of a regime aimed against Turkish Cypriots that cannot be successfully challenged before Greek Cypriot courts amount to violations of Articles 6, 8, 13 and 14 of the Convention and Article 1 of Protocol No.1.

As is well known, the ECHR, in its judgment of 22 December 2005 of *Xenides-Arestis v. Turkey* (application no. 46347/99) had prompted the Turkish Cypriot side in the direction of establishing the Immovable Property Commission and then went on to rule that the Immovable Property Law of the Turkish Cypriot side in principle had met the requirements of the European Convention on Human Rights in its judgment of 7 December 2006. The Commission has been in operation since 22 March 2006. It has been working efficiently and has settled a considerable number of Greek Cypriot applications on the basis of compensation, exchange and restitution.

As of today, the number of applications filed to the Immovable Property Commission has reached 372. The number of judgments delivered by the Immovable Property Commission has reached a total of 50 judgments by consent of applicants which is so noted as friendly settlements by the Immovable Property Commission. In addition to noting friendly settlements, the Immovable Property Commission has also begun hearing on a number of applications and the judgments on these applications will be delivered shortly.

In the most recent applications, there has been an increase in the request for compensation and exchange. For instance, in 326 out of 372 applications until today, compensation has been the preferred form of redress. 14 applicants asked for exchange of their properties in northern Cyprus with Turkish Cypriot properties in the South. In the light of the procedure defined in section 8 of Law 67/2005 two friendly settlements involving exchange as redress, were achieved.

The increased demand for exchange can only be satisfied in practice with the cooperation of Greek Cypriot authorities. The properties that either belong to the Turkish Cypriot Government or Turkish Cypriot individuals are in the South. Hence, the Land Registry where the properties lies, namely the Greek Cypriot authorities, are in a position to effect conveyance of those properties from Turkish Cypriots to the new Greek Cypriot owners. One such conveyance is pending before the Greek Cypriot authorities with respect to Mr. Tymvios who applied to the Immovable Property Commission and who reached a friendly settlement which was noted by the Commission. This friendly settlement was subsequently approved of by the ECHR in its just satisfaction judgment of 22 April 2008 in *Tymvios v. Turkey* (application no. 16163/90). The ECHR held that this friendly

settlement "… was based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 in fine of the Convention and Rule 62 § 3 of the Rules of Court) and that it is equitable within the meaning of Rule 75 § 4 of the Rules" (para. 15) and struck the case out of its list of cases (operative part 1). This judgment is final since the parties undertook not to request a rehearing of the case before the Grand Chamber.

The statistics noted above show that even fewer Greek Cypriots are asking for restitution as a remedy. As it could be recalled, restitution can only be granted upon request by the applicant according to Immovable Property Law. This is an acknowledgment of the reality on the ground as opposed to in theory that most Greek Cypriots do not want restitution to their properties after establishing a new life in the South for over 34 years. Instead, they prefer compensation and/or exchange, to further their livelihood in the South.

As far as the judgments delivered by the Immovable Property Commission are concerned, in 3 applications, the applicants were restituted and received compensation upon their request. In 44 applications, the applicants were given compensation. In 2 other applications, the applicants received exchange and compensation. In 1 other case, the applicant agreed to restitution upon the solution of the Cyprus problem and in the interim period, all constructions and other developments on the properties have frozen.

The Turkish Cypriot side has stressed that those Greek Cypriot applicants who especially want restitution as a remedy should lodge an application to the Immovable Property Commission as soon as possible. It should be remembered that the Commission assesses the property and then in turn determines the kind of redress available at the time of application. This is an encouragement for those applicants who specifically want restitution to apply as soon as possible so that any transfer or improvement with respect to such properties that may exclude restitution is automatically prevented.

- - - - -