



# Property disputes in north Cyprus

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Property ownership is a major issue in the divided island of Cyprus, not just for Cypriots but for British and other people.

Many thousands of people were displaced after the Turkish intervention in 1974, abandoning their property, and in the north much of this has been transferred to other people without the original owner's consent. The resulting disputes have not only thwarted progress in reunification talks but also resulted in a large number of court cases. The *Orams* case, involving a British couple, held that the courts in England and Wales had to enforce the judgement of a Nicosia court that they demolish the house they had built in the north and hand the land back to the Greek Cypriot who had fled from it. Other cases have also upheld the rights of pre-1974 owners even against those who subsequently bought in good faith. But a new Immoveable Property Commission in the north appears to be a better forum for dispute resolution than its predecessor, meaning that far fewer cases will go to the European Court of Human Rights.

## Contents

<b>1</b>	<b>Disputes over property ownership following the division of Cyprus</b>	<b>2</b>
<b>2</b>	<b>Greek Cypriot penalties for illegal occupation or development of property have been raised</b>	<b>2</b>
<b>3</b>	<b>The <i>Orams</i> case: the UK courts must enforce a judgment of a Nicosia court ordering forfeiture of land in the north</b>	<b>3</b>
<b>4</b>	<b>Early ECtHR cases: legal ownership before 1974 continues</b>	<b>4</b>
<b>5</b>	<b>Later ECtHR cases: the new Immoveable Property Commission is an “effective domestic remedy”</b>	<b>5</b>
<b>6</b>	<b>General advice on buying property in Cyprus</b>	<b>8</b>

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## 1 Disputes over property ownership following the division of Cyprus

There are thousands of long-running disputes over property ownership in Cyprus resulting from the partition of the island after the intervention of Turkish troops in 1974. Hundreds of thousands of both Greek and Turkish Cypriots fled or were displaced, and many of them claim ownership of land which they were forced to vacate.

The land left by Greek Cypriots in the north is deemed there to have passed to the 'Turkish Republic of Northern Cyprus' (TRNC, an entity which is officially recognised only by Turkey) and the TRNC authorities have transferred many of those plots of land to private individuals. The result is thousands of claims to ownership of properties from people who were displaced during the events of 1974, and significant uncertainty for purchasers of land in the north.

The property issue was central to the Greek Cypriot rejection of the 'Annan plan' for reunification in the referendum of April 2004. A mechanism for the return of property to rightful owners has been described as a "make-or-break" issue for the reunification talks,<sup>1</sup> but there is still no agreement on compensation versus restitution or return.

The House of Commons Foreign Affairs Committee looked at property rights in its 2004-05 inquiry into Cyprus, and included in its report a short paragraph warning that British people buying land in the north risked being taken to court by Greek Cypriots.

**Foreign Affairs Committee, [Cyprus](#), HC 113 2004-05, 22 February 2005:**

"According to the British Residents' Society of Northern Cyprus, there are about 6,000 British residents in the North. Many of them own properties built on land to which Greek Cypriots have legal title. The British Government advises prospective purchasers of property in northern Cyprus to seek independent, qualified legal advice before doing so, because "The non-recognition of the 'Turkish Republic of Northern Cyprus' and the possibility of a future political settlement in Cyprus could have significant practical or financial implications for those considering buying property in the north." We consider the Government is right to do this. There have recently been some high-profile court cases involving British citizens who have purchased property in northern Cyprus. Now that Cyprus is in the EU, court judgments reached in Nicosia may be enforceable in the United Kingdom and British residents may find themselves increasingly subject to legal action. **We conclude that British citizens who intend to buy property in northern Cyprus risk exposing themselves to legal action by Greek Cypriots who may be the rightful owners of those properties. We recommend that the Government lose no opportunity to warn prospective purchasers of this risk.**"

## 2 Greek Cypriot penalties for illegal occupation or development of property have been raised

On 17 March 2005 the Republic of Cyprus adopted a law amending Article 281 of the Penal Code, as a result of which the crimes of illegal occupation, cultivation, and the distribution or use of immovable property now carry a prison sentence of up to two years and/or a fine of up to £5,000. This was clearly aimed at European citizens buying or developing properties in the north which are claimed by Greek Cypriots. Because a penalty of over a year's imprisonment is now available, European arrest warrants may be issued if the defendant is in another European country.

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<sup>1</sup> "Cyprus: call to speed up peace talks", *European Voice*, 17 September 2009, p5

### **3 The *Orams* case: the UK courts must enforce a judgment of a Nicosia court ordering forfeiture of land in the north**

A complex case involving a British couple, a plot of land in north Cyprus and courts in Cyprus, England and Brussels was eventually resolved in 2010 in favour of the Greek Cypriot who had been forced to leave the land.

In 2002 a British couple, David and Linda Orams, bought a plot of land in northern Cyprus from its registered owner under the laws of northern Cyprus, and built a holiday villa on it. Meletios Apostolides, whose family had been forced to leave the north, claims ownership of that land under the law of the Republic of Cyprus. He therefore brought a civil action against the Orams in the civil courts of the Republic of Cyprus. In its judgment of 15 November 2004, the Nicosia District Court ordered the Orams to demolish the villa, swimming pool and fencing they had built, hand over the land to Mr Apostolides and pay damages. The judgment could not, as a practical matter, be enforced in northern Cyprus – but under EC Regulation 44/2001 on *jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*, it could be enforced in any EU Member State against the assets of the defendants in that state. Mr Apostolides therefore brought proceedings in the UK against the Orams' house in Sussex.

On 21 October 2005, the High Court ordered that the judgments were enforceable in England. The Orams brought a successful challenge against that order before a High Court Judge.<sup>2</sup> In his judgment of 6 September 2006 the English judge allowed the Orams' appeal and ordered Mr Apostolides to pay damages and costs to them. He did not get involved in the merits of the property claim, but appears to have accepted the Nicosia judgment that Mr Apostolides's rights in relation to the property remain in force and that he remains the lawful owner of his property. The decision was only about the enforceability of that judgment in the UK.

The case then went to the Court of Appeal, which asked the European Court of Justice (ECJ) for a ruling on whether the EC Regulation did in fact oblige the UK courts to enforce the Nicosia judgment, given that it relates to land in the TRNC over which the Republic of Cyprus does not exercise effective control and in which the application of European Community law is therefore largely suspended. In April 2009, the ECJ ruled that the Regulation applied, and therefore UK courts should enforce the judgment.<sup>3</sup>

The case therefore came back to the UK Court of Appeal for a judgment. The Orams asked that the Nicosia judgment should not be enforced either (1) on public policy grounds, because the courts of EU Member states should refrain from becoming embroiled in the Cyprus dispute and because litigants such as Mr Apostolides should not use the courts of member States "as a mechanism to further their political objectives", or (2) because of appearance of bias of the ECJ's Judge Skouris, based on contacts between him and Cypriot representatives before and during the court's consideration of the case. On 19 January 2010 the Court of Appeal rejected both arguments and ruled that the Nicosia judgment had to be enforced.<sup>4</sup>

This latest decision is final: under the EC Regulation, no further appeal to the UK Supreme Court is permitted. If the Orams do not comply with the Nicosia judgment, the British courts

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<sup>2</sup> [Orams v Apostolides](#) [2006] EWHC 2226 (QB)

<sup>3</sup> Case C-420/07 [Apostolides v Orams](#), ECJ judgment of 28 April 2009. See "[Greek Cypriots can claim back land, EU court says](#)", *EU observer*, 29 April 2009

could order the sale of their Sussex home to pay compensation to Mr Apostolides, whose costs are estimated at €1 million.<sup>5</sup> Many other people with holiday homes in northern Cyprus fear that the case will act as a precedent for them.

#### **4 Early ECtHR cases: legal ownership before 1974 continues**

Many Greek Cypriot owners of property in Northern Cyprus, and the Greek Cypriot Government itself, have applied to the European Court of Human Rights (ECtHR) on property issues. They have alleged that the Turkish Government, through the TRNC, has violated Article 8 (right to respect for the applicant's home) of the European Convention on Human Rights (ECHR) and Article 1 of ECHR Protocol No.1 (protection of property), and that there is no effective domestic remedy.

The ECtHR has ruled in a number of these cases that owners of property in northern Cyprus prior to 1974 continue to be regarded as the legal owners of that property, despite purported sales to new owners.

##### ***Loizidou***

This case, which began in 1993, concerned a Greek Cypriot, Titina Loizidou, a refugee from Kyrenia, who was prevented from claiming her property in Northern Cyprus. In December 1996 the ECtHR ruling stated that Mrs Loizidou had been unlawfully denied control of her property by the Turkish Government.

In July 1998 the ECtHR ruled on entitlement to "just satisfaction", deciding that Turkey should pay Mrs Loizidou US\$825,000 in compensation for the loss of the use of her property. The Turkish Government rejected the ruling, maintaining that it was politically motivated.<sup>6</sup> The non-implementation by Turkey of the 1998 judgment raised the profile of the property issue in Northern Cyprus.

The British Government said in 2001 on the *Loizidou* case that it would continue to play its part in the Council of Europe's Committee of Ministers in making sure the necessary measures were implemented, and that it had "taken regular opportunities in bilateral discussions to urge Turkey to comply with the judgment".<sup>7</sup>

##### ***Cyprus v. Turkey***

On 10 May 2001 the ECtHR ruled by 16 to 1 in the [Fourth Interstate Appeal of Cyprus against Turkey](#) that Turkey was committing a "continuous violation of Article one of Protocol No.1 (protection of property), of the ECHR, because Greek Cypriot land owners in Northern Cyprus were deprived of their right to free access and control, use and enjoyment of their property, as well as any compensation for the interference with their property rights (para.189)". The ruling obliged the Government of Turkey to compensate refugees for the time period of the deprivation of use and to allow them to return to their homes.

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<sup>4</sup> [Apostolides v Orams & Ors \[2010\] EWCA Civ 9](#) (19 January 2010)

<sup>5</sup> 'Legal ruling on villa may affect Irish owners', *Irish Times*, 21 January 2010 (via Factiva)

<sup>6</sup> There is an interesting legal commentary by Robin White (Professor of Law at the University of Leicester), called "Interference with Property Rights in Northern Cyprus", published in the *European Law Review*, Vol.22, August 1997, which can be obtained from the Library.

<sup>7</sup> HC Deb 15 January 2001, c 28W

## 5 Later ECtHR cases: the new Immoveable Property Commission is an “effective domestic remedy”

In 2005 the ECtHR in the *Xenides-Arestis* case ordered Turkey to set up an effective system for resolving property disputes in the TRNC. The Immoveable Property Commission (IPC) was therefore established in 2006. The ECtHR now holds that the IPC is an “effective domestic remedy”, so applications to the ECtHR will not be admissible unless there has first been an application to the IPC.

### ***The Xenides-Arestis case: introduction***<sup>8</sup>

Myra Xenides-Arestis, a Cypriot national of Greek-Cypriot origin who lives in Nicosia, owns land and property in Varosha, Famagusta, given to her by her mother. One of the houses was her home, where she lived with her husband and children, and the rest was used by family members or rented out. Mrs Xenides-Arestis had been prevented from living in her home or using her property since the 1974 military operations. She took her case to the ECtHR, claiming compensation not for any purported expropriation of her property, since she is still the legal owner of her property and no issue of expropriation arose, but for loss of use of the land and the consequent lost opportunity to lease or rent it.

### ***The 2003 property compensation commission was not an “effective domestic remedy”***

In April 2005 the ECtHR first ruled that “effective domestic remedies” could not be found at that time in the TRNC. The TRNC had in 2003 enacted a *Law on Compensation for Immovable Properties Located within the Boundaries of the Turkish Republic of Northern Cyprus*,<sup>9</sup> and under this law a property compensation commission was set up to deal with compensation claims. However, the commission comprised mainly people living in houses owned, or built on property owned, by Greek Cypriots. Also it offered only compensation to Greek Cypriots in exchange for the return of their title deeds, and no possibility of restitution of property. The ECtHR therefore decided that the commission was not an effective or adequate remedy for Greek Cypriots with property claims in the Turkish-occupied areas. Consequently, Greek Cypriots were not obliged to exhaust domestic remedies to be able to appeal directly to the ECtHR, and Mrs Xenides-Arestis’s case therefore was admissible.<sup>10</sup>

### ***Mrs Xenides-Arestis wins her case***

The ECtHR then went on to consider the merits of Mrs Xenides-Arestis’s case. In December 2005 it held:

- by six votes to one, that there had been a violation of Article 8 ECHR (right to respect for the applicant’s home);
- by six votes to one, that there had been a violation of Article 1 of ECHR Protocol No. 1 (protection of property);
- unanimously, that it was not necessary to examine the applicant’s complaint under Article 14 (discrimination); and
- unanimously, that Turkey should, within three months, set up a system to provide genuinely effective redress for Mrs Xenides-Arestis and all similar applicants (there were approximately 1,400 such cases pending before the Court, which were adjourned until Turkey acted).<sup>11</sup>

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<sup>8</sup> Application no. 46347/99

<sup>9</sup> Law 49/2003, 30 June 2003

<sup>10</sup> Admissibility decision, *Xenides-Arestis v. Turkey* (application no. 46347/99), 6 April 2005 (see [press release](#))

<sup>11</sup> [Press release of Registrar](#), 22 December 2005

The ECtHR maintained that the Greek Cypriots' rejection of the Annan plan did not bring to an end the continuing violation of the rights of displaced Greek Cypriots: the applicant still had to be seen as the legal landowner.

On 7 December 2006 the ECtHR issued its final judgment on the case, ordering Turkey to pay €850,000 in compensation and €35,000 for costs and expenses (plus interest) to Ms Xenides-Arestis.

**The TRNC establishes a new Immoveable Property Commission**

To implement the ECtHR's order, in December 2005 the TRNC Parliament passed a new law, the *Law for the Compensation, Exchange and Restitution of Immoveable Properties*.<sup>12</sup> This established a new **Immovable Property Commission** (IPC), with a subsequent right of appeal to the High Administrative Court of the TRNC and thence to the ECtHR. The

<p><b>The new IPC: compensation, exchange or restitution</b></p> <p>Under the legislation establishing the reformed Immoveable Property Commission any Greek Cypriot with property in the North can apply for compensation, exchange or return – the latter within certain conditions.</p> <p>Those conditions specify that some properties may be returned immediately and others only after a solution to the Cyprus problem.</p> <p>If return is not possible the Greek Cypriot will be offered either compensation or exchange for a Turkish Cypriot-owned property abandoned in the South, title deeds of which are held by the Turkish Cypriot authorities. In the case of exchange, the values of the houses will be considered: If the house in the South is deemed to be worth more than the house in the North, the difference will be made up by the Greek Cypriot: In the opposite case, the difference will be paid by the commission to the Greek Cypriot.</p> <p>Properties without title deeds issued by the TRNC, which are not being used and which do not cause a threat to national security or public order would be eligible for immediate return.</p> <p>Properties with TRNC title deeds would be eligible for return after a solution to the Cyprus Problem. Those eligible would be properties where the increase in the current value of the property through investment or a project approved by the authorities, does not exceed its value when it was abandoned in 1974.</p> <p>Anyone who had to leave such a property would be compensated with a similar home of the same value.</p> <p>If the increase in value of a property claimed was deemed to be higher than the 1974 value, then the Greek Cypriot would be offered a former Turkish Cypriot South Cyprus property in exchange or given compensation.</p> <p>All compensation is to be paid by the commission using funds from Turkey – and no current user or owner in the North will be expected to pay.</p> <p><i>Republic of Cyprus Press and Information Office, 26 March 2006</i></p>
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Commission was formally established on 22 March 2006. Its seven members were selected from a list of candidates proposed by the President of the Turkish Republic of Northern Cyprus, none of whom could derive any benefit, directly or indirectly, from the immovable properties on which rights were claimed by those who had to move from northern Cyprus in 1974. The Commission is headed by Sümer Erkmen.

The *Guardian* reported that the Turkish Cypriot Government believed changes it had approved regarding compensation would “meet the court’s expectations” and that “this legal arrangement offers an important opportunity towards settlement.”<sup>13</sup>

Any dispossessed Greek Cypriot can now apply to the IPC for compensation, exchange, or – and this is the new element – restitution. The new law stipulates, among other things, that the reinstatement of former Greek

<sup>12</sup> Law no. 67/2005

<sup>13</sup> [Guardian Unlimited 23 December 2005](#)

Cypriot property and compensation or exchange arrangements would be carried out according to the standards and rules laid down and, more significantly, as part of a future comprehensive settlement of the Cyprus problem.<sup>14</sup>

Applications to the Commission soon began to arrive from Greek Cypriots, and the IPC has now concluded over a hundred of the 626 cases lodged. Although most of its rulings involve compensation - the IPC has paid over £40m to the applicants as compensation – it has also sometimes ruled for restitution (sometimes deferred or partial) and for exchange of properties.<sup>15</sup>

Ironically, it seemed unlikely that Myra Xenides-Arestis' property in Varosha would qualify for immediate return under the new law, because properties deemed to constitute a security threat can be exempted until the Cyprus problem is settled, and the army-patrolled suburb on the edge of Famagusta was likely to be seen in this light.<sup>16</sup> The IPC did offer to consider her claim, and even though Ms Xenides-Arestis rejected the invitation it nonetheless decided to examine her case and determine an amount of compensation that should be paid. As alternatives, the Commission noted that it would be entitled to take a decision to restore the property after the settlement of the Cyprus problem and ban any improvement, sale or purchase in the meantime, or offer her a Turkish-Cypriot-owned property in the Republic of Cyprus of equal value to her property.

***The ECtHR confirms that the IPC is an “effective domestic remedy”***

The ECtHR decided that Ms Xenides-Arestis could not be required to apply to the new Commission to seek reparation for her damages given that the Court had already decided on the merits, and therefore it awarded her compensation itself (taking into account the IPC's calculations).

But, crucially, the ECtHR did accept the IPC as a valid domestic remedy. This means that the 50 or so property claims lodged with the ECtHR relating to land in north Cyprus - and the hundreds more that were still pending - could now be considered first by the IPC. Only after that remedy (and any subsequent appeal to the TRNC High Administrative Court) had been exhausted could applicants appeal to the ECtHR.

The first ECtHR application to be considered by the IPC instead was in June 2007; it authorised an exchange of immovable property between the applicant (a Greek Cypriot owner, who already applied to the ECtHR), and a Turkish Cypriot who left a similar-valued property in the South.<sup>17</sup> This opened the way for the withdrawal of the complaint from the ECtHR and for future cases to be forwarded to the IPC.

In a recent set of test cases, the ECtHR has confirmed that it views the IPC as an effective domestic remedy. On 18 November 2009, the Grand Chamber of the ECtHR heard the case of *Demopoulos v Turkey* and seven other cases.<sup>18</sup> The applicants were all Cypriot nationals of Greek-Cypriot origin who claimed to be the owners of movable and immovable property located in the northern part of Cyprus. They alleged that the Turkish authorities were preventing them from having access to this property and disposing of it as they wish. A

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<sup>14</sup> For detailed information on the Annan Plan and the Referenda in Cyprus see Library Standard Note SN/IA/3123 *Cyprus: After the Referenda*, 2 July 2004

<sup>15</sup> [IPC website home page](#) [viewed 28 July 2010]

<sup>16</sup> Cyprus PIO, 26 March 2006

<sup>17</sup> *Turkish Daily News*, 'Green light for exchange formula', 25 June 2007

<sup>18</sup> Cases 46113/99, 3843/02, 13751/02, 13466/03, 14163/04, 10200/04, 19993/04, 21819/04

summary of the cases and the relevant domestic law is given in a document from the court,<sup>19</sup> and a [webcast](#) of the hearing is available on the ECtHR website.

In March 2010 the Court found that the cases were inadmissible: the IPC provided an accessible and effective framework of redress for complaints of this type. The applicants had not therefore exhausted domestic remedies. The Court stressed that this decision did not require people to use the IPC – the claimants could choose to await a political solution – but if applicants wished to lodge an application with the ECtHR, its admissibility would be considered on this basis.<sup>20</sup>

## **6 General advice on buying property in Cyprus**

The website of the British High Commission in Nicosia includes [advice on buying property in Cyprus](#), along with detailed answers to frequently-asked questions. The main recommendation is to appoint an experienced and fully independent lawyer. The advice points out that purchasers of land in the north could face legal proceedings in Cyprus as well as attempts to enforce judgments elsewhere in the UK, and that a future settlement of the Cyprus problem could result in the restitution of their property to its original owners.

Many other countries' embassies provide similar advice.

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<sup>19</sup> ECtHR, “[Statement of Facts and Questions to the Parties](#)”, undated [viewed 24 November 2009]

<sup>20</sup> ECtHR press release, [Amended law provides accessible and effective redress for Greek Cypriots' complaints about deprivation of property in northern Cyprus following the 1974 Turkish invasion](#), 5 March 2010