

International Law, Human Rights and Realpolitik: the Case of Cyprus

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RÉSUMÉ

Les droits de l'homme sont devenus la nouvelle idéologie dominante des relations internationales. Dans cette communication - en se servant du cas de Chypre - on tentera justement de montrer que la politique des droits de l'homme s'applique de façon selective en tenant plutôt compte des intérêts du monde occidental - États-Unis en tête - que des principes généraux. Il est évident que cette question est très large et par conséquent nous nous limiterons à certains aspects particuliers pour démontrer que l'idéologie des droits de l'homme tout en étant en soi d'une valeur éthique certaine - est à routes fins pratiques au service des intérêts des pays riches et développés qui la manipulent à dessein.

ABSTRACT

Human rights have become the new dominant ideology in international relations. In this article, taking as an example the case of Cyprus, we try to show that the policy of human rights is applied in a selective manner which takes into consideration the interests of the Western world - the United States playing a leading role - more than the general principles of justice. It is evident that this question is vast and consequently we limit ourselves to certain aspects in order to show that the ideology of human rights, in itself of an unquestionable ethical value, is in reality serving the interests of the rich and developed countries which manipulate it accordingly.

I. Introduction

The end of the Cold War and the collapse of the Soviet Union have put forward a new era for the international system. The dominant ideology of this new era is one of human rights. Incidentally, this new dominant ideology, like all other ideologies which have dominated international relations for two centuries, is also of Western origin: i.e., eurocentrist. Independently of its internal ethical value, the ideology

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of human rights acts above all, as an instrument serving to justify the policies of Western countries towards the rest of the world.

Of course, human rights are not a recent creation. The Greek and Roman worlds had created a philosophy favouring these rights. Indeed, in the Greco-Roman world there existed a certain balance between the rights of the individual and those of the community. It has even been considered that "Greek liberty was consumed in the exercise of civil rights". Thus, the individual could not be dissociated from the citizen in spite of the sophists' effort to oppose the individual to the citizen. In fact, human rights will occupy a central place in the Western vision of the society's political organisation with the liberalism of modern times. Lock's thinking and the philosophy of the enlightenment are important sources in the affirmation of human rights. Contrary to popular belief that the French revolution created the notion of human rights, one must go back to Seventeenth-century England, birthplace of liberalism, - and even further - in order to find their first affirmation. The English pacts, agreements signed between the King and the barons or the chambers established the first individual liberties. These pacts are the Magna Carta (of John 'Lackland') of June 21, 1215, the Petition of Rights of June 7, 1628, the Act of *Habeas Corpus* of 1679 and the Bill of Rights of February 13, 1689. In 1776 followed the American Revolution, another source of human rights declarations and in 1789, the French Revolution. Of course, one must recognise the political repercussions of the French Revolution in this field, ensured by a solemn confirmation of the institution of human rights in its famous declaration of August 1789.

The French Revolution is also credited with the projection of human rights to an international level. For the first time, human rights became an important issue in international relations. In order to prevent the "export" of the French Revolution and its favourite themes, republicanism and human rights, the European monarchies put on an anti-French coalition.

Since then, "the question of human rights has become part of these permanent issues through which are reformulated the relations between States, between human communities"².

II. The Contemporary Period

The 1948 Universal Declaration of Human Rights of the United Nations General Assembly constitutes the starting point and the indispensable reference of the contemporary period. But the Cold War rapidly put aside the preoccupation of human rights, so that realpolitik occupied the entire international relations scene. Consequently, violations of individual rights are numerous in Eastern as well as in Western countries.

During decolonization and afterwards, in North-South relations, the Western vision of human rights was violently criticized by Third World countries. According to Third World disciples and a strong leftist movement, economic and social realities can not be isolated from human rights. Economic and social rights thus acquire the importance of civil and political rights.

The neoliberalism of the 1980s will once again push the ideology of human rights towards an extreme individualism at the expense of any social solidarity. Once more, the Western world has tried to impose its vision of human rights as a universal one.

This time, resistance comes mainly from the Islamic world. The Western concept of the individual is contested by Islam, which can in no way separate the individual from faith and religion, contrary to the philosophy of the enlightenment which recognized the liberty of faith and separated the political from the religious.

In fact, it should be stressed here that there was a contradiction between universalism and particularism, as well as the existence of two opposite visions of human rights: one universalist; the other, relativist. The first vision is ethnocentrist-eurocentrist in which the Western values are considered universal and "the western civilization,

champion of progress, is the inevitable destiny of all the world's cultures"³. The second vision negates the existence of universal values. "There would exist as many ethical values as cultures"⁴. Moreover, the World Conference on Human Rights held in Vienna in 1993 has linked, after much insistence of Asiatic countries, "the universalism of human rights to the national and regional particularisms and to the various historical, cultural and religious contexts"⁵.

Besides these problems, there is the question of minorities and their rights, the explosion of diversity in this end of century, the dialectic of uniformisation and differentiation and the right to humanitarian assistance which threatens the sovereignty of nations-States and opens the door to interference⁶.

Can this question of interference for *supposedly* humanitarian purposes "be applied equally to all Nations?" The answer is clear: "All over history, never did a strong country tolerate an external intervention; if it had done so, it would not be any more a part of the Great countries of this planet. The assistance or intervention is applied to the small, the weak or the weakened"⁷.

III. The Legal Aspect

As far as the legal aspect is concerned, it is on the constitutional level that the human rights find a certain consecration. One must be reminded of the *Habeas Corpus* (1679) and the Bill of Rights (1689)⁸, long before the declaration of the French Revolution; in spite of the fact that in most of the cases, this legal consecration remains weak, confined to the preamble of various constitutions. The phenomenon of any extended constitutional protection is relatively recent. In certain cases, articles of the constitution are devoted to rights; sometimes the constitution is accompanied by a charter of rights⁹. Instead of including a charter in their constitution, some other countries simply vote special laws on human rights.

Moreover, adhesion to international organisations or to certain treaties obliges countries to respect the fundamental rights for fear of sanctions. From another point of view, international courts of justice can, in certain cases, sanction the violation of human rights as this was the case at Nuremberg, at the International Criminal Court of Justice for ex-Yugoslavia, or at the European Court of Human Rights.

In spite of this progress accomplished especially since the Second World War, the protection of human rights at the jurisdictional level remains uncertain. Ultimately, the problem is political. It is a question of power struggle, of *realpolitik*, of international context. For instance who can imagine how Germany could ever have been sanctioned at Nuremberg if this country had not been annihilated by the Second World War. Similarly, the United States was not sanctioned for the violation of human rights during the Vietnam War; neither was the Soviet Union, for the non-respect of human rights during the Stalin period. The same may be said of Russia, today, in the case of Tchetchenia. Moreover the United States is refusing to sanction the treaty creating the International Criminal Court in order to avoid condemnation of American citizens in case they would be accused of crimes against humanity.

IV. The Case of Cyprus

The case of Cyprus is a blatant example of the non-respect of human rights by a country, Turkey, which has occupied illegally the north part of the island since 1974. Let us mention that Turkey does not have the strength or the importance of the United-States, Russia, or even Indonesia (for the case of Oriental Timor). In spite of international condemnation, it permits itself, unpunished, to violate human rights in Cyprus, but also elsewhere, especially on its own territory.

In order to understand this situation, we will review the facts.

A. The Facts

Turkey invaded the Republic of Cyprus, an independent State and UN member in July 1974, using as just cause the *coup d'Etat* organized against the legitimate government of the island. Even if the constitutional order was rapidly reestablished, this did not prevent Turkey from continuing its military operations in order to occupy in the end 37% of the Cyprus territory. Since then, the situation has not changed, despite calls from the UN as well as other international organisations for an end to the occupation. From the Greek point of view, Turkish Cypriots seem to have constituted a strategic minority for Turkey, permitting it to justify an expansionist policy.

Thousands of Cypriots, including numerous civilians were killed or ill-treated. Some have even disappeared without a trace. Turkey has, moreover, been accused of pursuing a policy of ethnic cleansing as was proven by the two-hundred thousand Greek-Cypriot refugees, that is to say 40% of the island's population in 1974¹⁰.

B. Legal Recourses

Of course, on the political level, the violation of human rights in Cyprus has been confirmed by various international instances, but the sole possible jurisdictional recourse against Turkey was to resort to the European Commission for Human Rights as well as to the European Court for Human Rights. Accordingly, Cyprus has called upon the jurisdiction of the European Commission of Human Rights in 1974, in 1975 and in 1977¹¹.

The Commission, after having evaluated the evidence submitted, released two reports¹² in which it found Turkey guilty, considering that it had seriously violated human rights in Cyprus since the island's invasion.

Among other things, the Commission refers to the assassination of civilians by the Turkish army in violation of Article 2 of the European Convention and to the 200,000 Greek-Cypriot refugees expelled by the Turkish army in violation of Article 8 of the Convention. Furthermore, Turkey continues to violate the same article of the Convention by systematically refusing to allow the refugees to return to their homes and properties.

The Commission also decided that Turkey had violated Article 5 of the Convention by imprisoning civilians and soldiers and by treating them in an unacceptable manner in Cyprus or by transferring them to Turkey.

Other atrocities committed by the Turkish army have been denounced; e.g., the kidnapping and assassination of women and other civilians, Turkish forces not having taken the necessary measures in order to prevent them from doing so. On the contrary, these actions have been deliberately committed in order to terrorize the population within the occupied area, and thus force them to leave. These atrocities have been considered by the Commission as an inhuman treatment in violation of Article 3 of the European Convention. The Commission has found that Turkey permitted its army to perpetrate theft and vandalisms on Greek Cypriots' possessions, in violation of Article 1, of Protocol No 1 of the Convention.

Moreover, the Council of Europe's Commission of Human Rights has declared admissible a number of individual motions against Turkey submitted by the victims of the continuing violation of their right to the peaceful enjoyment of their property in the zone occupied by Turkey.

Always at the jurisdictional level, the European Court of Human Rights rendered on December 18, 1996, a very important decision in the case *Loizidou* against Turkey. This case involved a Cypriot citizen who was chased away from Kyrenia by the Turkish army and lived as a refugee in the south of the island. The Court decided that the "denial to the applicant of access to property in northern Cyprus falls

within Turkey's "jurisdiction" for purposes of Article 1 of Convention and is imputable to Turkey". The Court considers also that the "continuous denial of access amounts to interference with rights under Article 1, Protocol No. 1".¹³

The Court recognized that Turkey has the real control of the north of Cyprus. Based on a Commission's report dated July 8th 1993, it considers "obvious from large number of troops engaged in active duties in northern Cyprus that Turkish army exercises effective overall control there. Given the circumstances of the case, this entails Turkey's responsibility for policies and actions of the "TRNC" ("Turkish Republic of Northern Cyprus").¹⁴ Concerning "TRNC", the Court adds that it is "evident from international practice and resolutions of various international bodies that international community does not regard "TRNC" as a State under international law and that the Republic of Cyprus remains sole legitimate Government of Cyprus."¹⁵

The importance of Turkey's condemnation by the European Commission of Human Rights goes beyond the sole European frame. In fact, the European Convention prolongates the 1948 Universal Declaration of Human Rights. Consequently, when Turkey violates the provisions of that Declaration, it also violates the provisions of the 1948 United Nations' Universal Declaration.¹⁶

In the same way, Turkey's sanction by the Commission or the European Court reinforces the condemnation formulated by other international instances which don't have a jurisdictional power. Furthermore, if these instances had a jurisdictional power, one could consider, *mutatis mutandis*, that they would conclude the same way the European Commission or the European Court of human rights did.

C. Various Decisions Regarding Human Rights' Violations in Cyprus.

1. Missing Persons

One of the most painful problems resulting from Turkey's invasion of Cyprus in 1974 is that of the missing persons. There is evidence

proving irrefutably that some persons, including civilians were alive in the Turks' hands far after hostilities had stopped.

Various resolutions of the UN General Assembly, of its Third Commission, and of the European Parliament demanding that the families of missing persons be informed about the fate of their relatives, remain unanswered. Following a recommendation of the UN General Assembly's Third Commission, an Inquiry Committee was created on this subject in 1978. Since then, various resolutions of the Third Commission expressing worries about the lack of progress in the Committee's work proved ineffective, the Turkish part refusing to give the necessary information which would permit the Committee to draw convincing conclusions for the families concerned and the international community.

2. The Enclaved

In 1974, some 20,000 Greek Cypriots remained enclaved in the north of the island. Today, only a few hundred remain, the majority in the peninsula of Karpase. The others have been expelled after, according to the Greek point of view presented to international organisations, a continuous campaign of harassment, discrimination and oppression by the Turkish army of occupation.

In spite of international appeals, the fundamental rights of the enclaved are not respected as regards education, religion, health and security. Certain individuals have even suffered physical aggression.

3. The Turkish Settlers

Since 1974, Turkey has followed a policy of colonization. As a result, thousands of settlers from Anatolia have founded communities in the occupied regions. One estimates at 100,000 the number of settlers. Meanwhile, thousands of Turkish Cypriots have migrated abroad because of unemployment and the violation of their fundamental rights and liberties. Out of a total of 100,000, an estimated 30,000

Turkish Cypriots have left the island. Thus the island's population balance is altered to the benefit of Turkey's political projects.

This colonization policy contravenes the 1977 Geneva Convention protocole. Furthermore, the UN, the Council of Europe, the European Parliament, the Non-Aligned Countries Movement, the Commonwealth and other international authorities have condemned this effort aiming to alter the island's demographic structure.

The Council of Europe and especially the Committee for Migration, Refugees and Demography of its Parliamentary Assembly gave a mandate to Alfonso Cuco, a parliamentarian of Spanish origin, in order to evaluate the colonization of the North of Cyprus by Turkey. In an overwhelmingly accusatory report against Turkey, submitted at the Committee for Migration, Refugees and Demography on November 13, 1991 in Paris, the Spanish parliamentary representative, having held an inquiry on the spot, found out that Turkish colonization had radically altered the demographic composition of Cyprus. He added that the leaders of the Turkish-Cypriot opposition were advancing numbers that even surpassed the estimates of the Government of Cyprus in terms of the numbers of settlers. Moreover, it was noted that the colonization constituted a major obstacle to the solution of the Cyprus question. The Committee approved Cuco's report on April 14, 1992 in Valencia, Spain, the Parliamentary Assembly of the Council of Europe followed suit on October 7, 1992.

In spite of the recommendation of the Council of Europe's Parliamentary Assembly to put an end to the colonization, Turkey has nevertheless continued to install new settlers in the occupied part of Cyprus.

4. The Destruction of the Cultural Heritage in the Occupied Part of Cyprus

From the Greek point of view, "the continuous and persisting Turkey's efforts, directed against the cultural heritage in the occupied

region of Cyprus, are part of a deliberate policy consisting to destroy and eliminate every trace of a history and a culture 9,000 years-old and transform the occupied zone in a Turkish province by a continuous procedure of Turkization"¹⁷. Thus, the Greek part points out the destruction and the pillaging of churches and archeological sites, the conversion of churches into mosques and the illegal export of antiquities sold to private collectors abroad. Indeed, this destruction of the cultural heritage in the island's occupied part has been observed by international authorities.

In at least one case, which became famous, precious and unique frescoes and mosaics from the Church of the Panayia of Kanakaria -in the occupied part of Cyprus- were exported and sold abroad to art dealers by a Turkish trafficker. On August 3, 1989, an American tribunal in Indianapolis rendered a decision forcing the dealer to give four fragments of the Kanakaria mosaics back to the Church of Cyprus, their legal owner. A Court of Appeal from the Seventh District of the United-States confirmed this decision on October 24, 1990¹⁸.

V. Why Does the West Accept the Violation of International Law and Human Rights in Cyprus ?

The question formulated above is pertinent. On the one hand, Cyprus is part of Europe, and more generally of the West, by its civilisation, traditions, economy and institutions. It is linked by customs agreements with the European Union; it is a candidate at the next broadening of the latter, already with a favourable opinion from the Bruxelles' Commission; it is a member of the Council of Europe and has signed the Helsinki conventions of 1975. On the other hand, Turkey pretends also to have a European vocation even if that is not easily accepted by Europeans who fear Islamism and the possibility of a massive migration of Turks towards the European Union. What should be stressed here, however, is the fact that Turkey is part of the Atlantic Alliance, that its army depends upon the Western weapons' supplies -especially American weapons- while it is considered by the

Western countries as a pillar of their defence; back then against the Soviet Union, now against the rising Islam and certain régimes hostile to Western countries' interests in the region: Irak and Iran, for example.

Undoubtedly, the West and, in particular, the United-States exercise considerable influence on this country. They, therefore, could bring it to adopt more conciliatory positions on the Cyprus question. They could exercise this influence in order to oblige Turkey to respect international law and human rights not only in Cyprus but also with the Kurds and even with its own citizens. It is well known that Turkey's assessment in human rights matters is more than negative; this has been shown repeatedly by various international authorities, including the European Union and the American State Department¹⁹.

Why then, do Western countries tolerate this situation? Why in the case of Turkey do they hold a totally different discourse from those they held in the case of Iran, Iraq or of Lybia? The question becomes all the more pertinent since in the case of Cyprus, the American Congress, had imposed, after the Cyprus invasion in 1974, an embargo on the sale of arms to Turkey, even if the American executive persuaded the Congress to lift it in 1978.

The answers one receives to these questions contradict the principles of international law and the respect of human rights. As one specialist noted, "one can't count anymore the situations where elementary human rights principles are violated under the Security Council's nose, which ideally, should coordinate its efforts in order to stop these human dramas"²⁰. Comparing Iraq's case with Turkey's, an observer wrote without hesitation: "even if they do not seem as barbarian as those used by Bagdad, Ankara's repression methods against the autonomist movements may be also bloody: the confrontations between the turkish army and the Labour Party of Kurdistan (PKK) have caused more than a thousand deaths, only for the year 1992. Amnesty International denounces systematically the practice of the Turkish army in the South-East of the country"²¹. One even notes that the West intervened against Irak in order to force this State to respect the rights of Kurds. On the contrary, in the case of Turkey, "the

United-States have even brought their support to Ankara" in its struggle against the Kurds pretexting that it was a case of terrorism"²². Consequently, the following question is asked: why this difference in treatment between Irak, for instance, and Turkey as far as the violations of human rights in Cyprus are concerned? This differentiation hardly finds a moral justification, all the more so since no fundamental difference between Koweit's invasion and that of Cyprus by Turkey exists at the legal level.

We could continue the comparisons between the energetic action of Western countries -America playing a leading role- towards Iraq in order to force that country to respect international law and human rights while they are "far from having discouraged the policy of certain States which continue, unpunished, to occupy by force some territories. A few examples are given: the occupation of Timor for a long time by Indonesia, Western Sahara by Morocco, the north of Cyprus by Turkey, the Gaza Strip, Jerusalem, the Syrian Golan, West Bank, and South-Lebanon by Israel. The blatant violation of international law in all these situations needs no demonstration : every time there are the same cardinal fundamental rules of sovereignty, of territorial integrity and of peoples' self determination that are violated"²³.

As Eugene Rossides, jurist and ex-vice-Secretary of the American Treasury Department under the Nixon administration pointed out, "in the case of Cyprus, a double standard has been applied in Turkey's favor in the name of alleged strategic value. American Presidents, for example, pressed for the removal of Soviet troops from Afghanistan, Cuban troops from Angola and Vietnamese troops from Cambodia, while supporting Turkish occupation troops and colonists in Cyprus"²⁴. Rossides adds that the United-States, in order to justify their position, "used the national security argument, centering it on Turkey's alleged strategic importance to the defense of the West and the United States"²⁵.

In an article published by *Le Monde Diplomatique* in March 1997, close links between the Western secret services -especially the CIA-, the Turkish extreme right and the mafia were established. The CIA

would repeatedly use for its various missions paramilitary groups such as the Grey Wolves. Thus, it was reported in this article that Emir Deger, "ex-military lawyer and Member of the Turkish Supreme Court of Justice, had proven the collaboration between the Grey Wolves and the antiguerrilla forces of the (Turkish) government as well as the very close links between the latter and the CIA. These secret paramilitary units were appointed to capture and torture the extreme leftists, if one believes Mr. Talat Turkan, a high military official in retirement, author of three books on their activities"²⁶. These paramilitary units would also have been used against the Kurdish people.

We must remind ourselves that the Grey Wolves were authorised by former Turkish Prime Minister, Tansu Ciller to lead terrorist activities in Cyprus and to violate human rights with impunity. On August 11, 1996, a group of this paramilitary organisation was brought to Cyprus in order to fight against a demonstration of people who wanted to circulate freely in the occupied part of the island, lynched Tassos Isaak, wounded many other demonstrators and members of the UN peace-keeping force²⁷.

In the case of Cyprus, one could always note that the Western countries controlling the security Council have never imposed sanctions on Turkey, favouring the mission of good offices of the UN Secretary General and their own representatives. Once again, we are far from the action undertaken against Iraq. In this context, one can understand why accusations of a double standard have been formulated.

One could continue the comparisons in order to show that the Western Countries, Americans playing a leading role, intervene in the name of the international law and respect of human rights when their interests are in jeopardy, while they show a definite passivity each time their allies violate the international law and human rights. Turkey constitutes one of these blatant examples. The new international world order proclaimed by the Americans after the Gulf War does not seem to affect Turkey. Nor the "moralisation" of international relations by the reign of law.

Undoubtedly, Turkey remains an important ally for Western countries for their strategy in the Middle East, Balkans and the former Soviet Republics of Caucase. This analysis could always be contested; however, for the United-States and their allies, this is obviously not the case. The West's policy towards Turkey is not without reminding the one followed in the past towards the Shah's Iran.

Nevertheless, between moral, international law, respect of human rights and economic or strategic interests, the latter seem to have much more weight.

Conclusion

The lucid observer who follows current events can not be optimistic about the respect of human rights. Even if this ideological discourse dominates in the States' profession of faith, especially in the United-States one, we must point out that "human rights are violated everywhere in the world, at various degrees, to a bigger or lesser extent, with more or less cynicism"²⁸.

In the case of Cyprus, there is not even the justification of a "cultural specificity", or of a whatsoever specificity in order to justify their violation. Because the "victim" (Cyprus) as well as the "agressor" (Turkey) claim themselves of being part of the Western World and of its values- thus of the universalism in matter of human rights. Furthermore, the occidental allies of Turkey want to present it as a European country and as a secular State rampant against Islamism.

Why then do Western world countries not bother Turkey in human rights matters? In which way is the Turkish occupation of Cyprus different from that of Koweit by Iraq? In which way are the violations of human rights by Iraq different from those perpetrated by Turkey?

As one author said, "the question of human rights is above all eminently political" and in this respect it is "an object of economical and strategic exchange"²⁹.

That's precisely what's happening in the case of Cyprus. The strategic importance of Turkey - contested by various analysts³⁰ - imposes itself against a small State. Thus the cynicism towards the occupation of the north of the island since 1974 and the permanent violation of human rights.

Nevertheless, in spite of the ambient pessimism, Cyprus has received support from the international community, especially from the civil society during this difficult period.

Whether in Cyprus, with Kurdish people or with its own citizens, Turkey will not be able to continue to violate human rights without being punished. In fact, history teaches us that the military-authoritarian régimes always end up collapsing and creating more problems than services rendered to those who bring them support, for economic and strategic considerations.

NOTES

1. Jacques ROBERT, *Libertés publiques*, Paris, Éditions Montchrestien, 1971, p. 33.
2. Philippe MOREAU DEFORGES, *Relations Internationales*, tome II, Paris, Éditions du Seuil, 1993, p. 217.
3. "Les droits de l'homme", in *Histoire critique du XX^e siècle*, ouvrage collectif, Paris, Éditions Hachette, 1993, p. 142.
4. *Ibid.*, p. 142.
5. Frédérick BERNARD (sous la direction), "Droits de l'homme", *Dictionnaire des questions internationales*, Paris, Les Editions de l'Atelier, 1995, p. 138.
6. Philippe MOREAU DEFORGES, *Relations Internationales*, tome II, Paris, Editions du Seuil, 1993, p. 213 et suivantes.
7. Philippe MOREAU DEFORGES, *op. cit.*, p. 239.

8. In the case of Great-Britain, as one knows, there isn't a formal Constitution but simple laws.

9. This is the case for instance of Canada.

10. There exists a riche bibliograpy on the Cyprus question including dozens of official documents of international organizations easily accessible. In spite of that, in order not to render this text heavy we contented ourselves to references that seemed to us strictly indispensable.

11. Applications nos 6780/74, 6950/75, 8007/77, Chypre contre la Turquie.

12. Reports adopted by the Commission on July 10 1976 and on October 4 1983. They have been rendered by a décision of the Commission's ministers' committee on April 2, 1992.

13. Council of Europe, European Court of Human Rights, Case of Loizidou v. Turkey (40/1993/435/514), Strasbourg, 18 December 1996, p. 19.

14. Case of Loizidou v. Turkey, *op. cit.*, p. 15.

15. Case of Loizidou v. Turkey, *op.cit.*, p. 15

16. Eugen T. ROSSIDES, "Cyprus and the Rule of Law", *Syracuse Journal of International Law and Commerce*, Syracuse University College of Law, (USA), vol.17, no 1, Spring 1991.

17. Press and Information Office, Republic of Cyprus, *The Cyprus Problem*, Nicosia, 1999, p. 118.

18. Autocephalous Greek Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc., 917 F. 2d 278 (7th Cir. 1990), reh'g denied, No. 89-2800 (Nov. 21, 1990).

19. On this subject, see among other sources, the Annual Reports of Amnesty International and those of the American State Department.

20. Barbara Delcourt et Olivier Corten, "La face cachée du nouvel ordre mondial : l'application discriminatoire du droit international" in *A la recherche du nouvel ordre mondial - I, Le droit International à l'épreuve*, Paris, Editions Complexe, 1993, p. 30.
21. *Ibid*, p. 31
22. *Ibid*, p. 31.
23. *Ibid*, p. 23.
24. Eugene T. ROSSIDES, *op. cit.*, pp. 79-80.
25. *Ibid*, p. 79.
26. Martin A. LEE, "Les liaisons dangereuses de la police turque", *Le Monde diplomatique*, Mars 1997, p. 9.
27. *Etudes helléniques - Hellenic Studies*, Vol. 4, no 2, Automne 1996, Montréal, pp. 192-200.
28. Philippe TEXIER, "Droits fondamentaux, Un combat sans cesse renouvelé", in *L'Etat du monde*, Paris, Editions La Découverte, p. 37.
29. *Ibid*, p. 38.
30. See, for instance, D. BOLLES, "Turkey as an Ally - Myth and Reality", in *The Rule of Law and Conditions on Foreign Aid to Turkey*, Washington, American Hellenic Institute, 1989.

APPENDIX I

EUROPEAN COMMISSION OF HUMAN RIGHTS

APPLICATIONS Nos. 6780/74 AND 6950/75

CYPRUS
AGAINST
TURKEY

REPORT OF THE COMMISSION

(Adopted on 10 July 1976)

(Excerpts)

PART IV - CONCLUSIONS

The Commission,

Having examined the allegations in the two applications (see Part II above);

Having found that Art. 15 of the Convention does not apply (see Part III);

Arrives at the following conclusions:

I. Displacement of persons

1. The Commission concludes by thirteen votes against one that, by the refusal to allow the return of more than 170,000 Greek Cypriot refugees to their homes in the north of Cyprus, Turkey violated, and was continuing violating, Art. 8 of the Convention in all these cases.

2. The Commission concludes by twelve votes against one that, by the eviction of Greek Cypriots from houses, including their own homes, by their transportation to other places within the north of Cyprus, or by their deportation across the demarcation line, Turkey has equally violating Art.8 of the Convention.

3. The Commission concludes by thirteen votes against one that, by the refusal to allow the return to their homes in the north of Cyprus to several thousand Greek Cypriots who had been transferred to the south under inter-communal agreements, Turkey violated, and was continuing to violate, **Art. 8** of the Convention in all these cases.

4. The Commission concludes by fourteen votes against one with one abstention that, by the separation of Greek Cypriot families brought about by measures of displacement in a substantial number of cases, Turkey has again violated **Art. 8** of the Convention.

II. Deprivation of liberty

1. "Enclaved persons"

(a) The Commission, by eight votes against five votes and with two abstentions, concludes that the curfew imposed at night on enclaved Greek Cypriots in the north of Cyprus, while a restriction of liberty, is not a deprivation of liberty within the meaning of **Art. 5(1)** of the Convention.

(b) The Commission, by twelve votes with two abstentions, further concludes that the alleged restrictions of movement outside the built-up area of villages in the north of Cyprus would fall within the scope of **Art. 2 of Protocol No. 4**, not ratified by either Cyprus or Turkey, rather than within the scope of **Art. 5** of the Convention. It is therefore unable to find a violation of **Art. 5** insofar as the restrictions imposed on Greek Cypriots in order to prevent them from moving freely outside villages in the north of Cyprus are imputable to Turkey.

2. "Detention centres"

(a) The Commission, by thirteen votes against one, concludes that, by the confinement of more than two thousand Greek Cypriots to detention centres established in schools and churches at Voni,

Gypsou and Morphou, Turkey has violated **Art. 5(1)** of the Convention.

(b) The Commission, by thirteen votes against one, concludes that the detention of Greek Cypriot civilians in Turkey was equally not in conformity with **Art. 5(1)**.

(c) Considering that it was unable to establish the imputability to Turkey under the Convention of the detention of 146 Greek Cypriots at Saray prison and Pavlides Garage in the Turkish sector of Nicosia, the Commission, by ten votes against two with two abstentions, does not consider itself called upon to express an opinion as to the conformity with **Art. 5** of the detention of Greek Cypriot prisoners in the north of Cyprus.

(d) The Commission, by 14 votes against none, with two abstentions, has not found it necessary to examine the question of a breach of **Art. 5** with regard to persons accorded the status of prisoners of war.

4. Final observation

The Commission, by seven votes against six with three abstentions, decided not to consider as separate issue the effect of detention on the exercise of the right to respect for one's private and family life and home (**Art. 8** of the Convention).

III. Deprivation of life

The Commission, by fourteen votes against one, considers that the evidence before it constitutes very strong indications of violations of **Art. 2** of the Convention by Turkey in a substantial number of cases. The Commission restricted the taking of evidence to a hearing of a limited number of representative witnesses and the Delegation, during the period fixed for the hearing of witnesses, heard eye-witnesses only

concerning the incident of Elia. The evidence obtained for this incident establishes the killing of twelve civilians near Elia by Turkish soldiers commanded by an officer contrary to Art. 2.

In view of the very detailed material before it on other killings alleged by the applicant Government the Commission, by fourteen votes against one, concludes from the whole evidence that killings happened on a larger scale than in Elia.

There is nothing to show that any of these deprivations of life were justified under paras. (1) of Art. 2.

IV. Ill-treatment

1. The Commission, by twelve votes against one, finds that the incidents of rape described in the cases referred to and regarded as established constitute "inhuman treatment" and thus violations of Art. 3, for which Turkey is responsible under the Convention.

2. The Commission, by twelve votes against one, concludes that prisoners were in a number of cases physically ill-treated by Turkish soldiers. These acts of ill-treatment caused considerable injuries and at least in one case the death of the victim. By their severity they constitute "inhuman treatment" and thus violations of Art. 3, for which Turkey is responsible under the Convention.

3. The Commission, by twelve votes against one, concludes that the withholding of an adequate supply of food and drinking water and of adequate medical treatment from Greek Cypriot prisoners held at Adana and detainees in the northern area of Cyprus, with the exception of Pavlides Garage and Saray prison, again constitutes, in the cases considered as established and in the conditions described, "inhuman treatment" and thus a violation of Art. 3, for which Turkey is responsible under the Convention.

4. The Commission, by twelve votes against one, concludes that the written statements submitted by the applicant Government consti-

tute indications of ill-treatment by Turkish soldiers of persons not in detention.

V. Deprivation of possessions

The Commission, by twelve votes against one, finds it established that there has been deprivation of possessions of Greek Cypriots on a large scale, the exact extent of which could not be determined. This deprivation must be imputed to Turkey under the Convention and it has not been shown that any of these interferences were necessary for any of the purposes mentioned in **Art. 1 of Protocol No. 1**. The Commission concludes that this provision has been violated by Turkey.

VI. Forced labour

The Commission, by eight votes against three votes and with one abstention, finds that the incompleteness of the investigation with regard to the allegations of forced labour does not allow any conclusions to be made on this issue.

VIII. Other issues

1. The Commission, by twelve votes against one vote and with three abstentions, considers that no further issue arises under **Art. 1** of the Convention.

2. The Commission, by thirteen votes against one vote and with two abstentions, has found no evidence that effective remedies, as required by **Art. 13** of the Convention, were in fact available.

3. Having found violations of a number of Articles of the Convention, the Commission notes that the acts violating the Convention were exclusively directed against members of one of two

communities in Cyprus, namely the Greek Cypriot community. It concludes by eleven votes to three that Turkey has thus failed to secure the rights and freedoms set forth in these Articles without discrimination on the grounds of ethnic origin, race and religion as required by **Art. 14** of the Convention.

4. The Commission, by twelve votes with four abstentions, considers that **Art. 17 and 18** of the Convention do not raise separate issues in the present case.

President of the Commission
(J. E.S. FAWCETT)

Secretary to the Commission
(H.C. KRUGER)

APPENDIX II

EUROPEAN COMMISSION OF HUMAN RIGHTS

APPLICATION No. 8007/77

CYPRUS
AGAINST
TURKEY

REPORT OF THE COMMISSION

(Adopted on 4 October 1983)

(Excerpts)

PART IV - CONCLUSIONS

The Commission,

Having examined the allegations in this application (see Parts II and III above);

Having found that Art. 15 of the Convention does not apply (see Part I, Chapter 4);

Arrives at the following findings and conclusions:

1. Missing persons (para 123 above)

The Commission, having found it established in three cases, and having found sufficient indications in an indefinite number of cases, that Greek Cypriots who are still missing were unlawfully deprived of their liberty, in Turkish custody in 1974, noting that Turkey has failed to account for the fate of these persons, concludes by 16 votes against one that Turkey has violated Art. 5 of the Convention.

2. Displacement of persons and separation of families (paras 135, 136 above)

The Commission concludes, by 13 votes against two with two abstentions that, by her continued refusal to allow over 170,000

Greek Cypriots the return to their homes in the North of Cyprus, Turkey continues to violate Art. 8 in all these cases.

The Commission further concludes by 14 votes against two and with one abstention, that, in the cases of continued separation of families resulting from Turkey's refusal to allow the return of Greek Cypriots to their family members in the North, Turkey continues to violate Art. 8 of the Convention.

3. Deprivation of possessions (para 155 above)

The Commission concludes, by 13 votes against one and with three abstentions, that Turkey has violated Art. 1 of Protocol No 1.

4. Absence of remedies (para 158 above)

The Commission, in its examination of the merits of this complaint, does not find it necessary to add anything to its finding in the decision on admissibility.

5. Discrimination (para 162 above)

Having again found violations of the rights of Greek Cypriots under a number of Articles of the Convention in the present case, the Commission does not consider it necessary to add anything to its finding under Art. 14 in the previous case.

6. Position of Turkish Cypriots (para 165 above)

The Commission, having regard to the material before it, finds that it does not have sufficient available evidence enabling it to come to any conclusion regarding this complaint.

President to the Commission
(C.A. NORGAARD)

Secretary to the Commission
(H.C.KRUGER)

APPENDIX III
COUNCIL OF EUROPE
EUROPEAN COURT OF HUMAN RIGHTS

Judgment delivered by a Grand Chamber
Case of *Loizidou v. Turkey*
(Merits)
(40/19993/435/514)

Turkey - denial of access to and interference with property rights in northern Cyprus

I. The Government's preliminary objection *ratione temporis*

Turkish Government claimed *inter alia* that applicant's property had been irreversibly expropriated by virtue of Article 159 of "TRNC" (Turkish Republic of Northern Cyprus") constitution of 7 May 1985, prior to Turkey's Declaration of 22 January 1990 accepting Court's jurisdiction.

Evident from international practice and resolutions of various international bodies that international community does not regard "TRNC" as State under international law and that the Republic of Cyprus remains sole legitimate Government of Cyprus - Court cannot therefore attribute legal validity for purposes of Convention to provisions such as Article 159 of 1985 Constitution - accordingly, applicant cannot be deemed to have lost title to property - alleged violations are thus of continuing nature.

Conclusion : objection dismissed (eleven votes to six).

II. Article 1 of Protocol No. 1

A. Imputability issue

Obvious from large number of troops engaged in active duties in northern Cyprus that Turkish army exercises effective overall control there — in circumstances of case, this entails Turkey's responsibility for policies and actions of "TRNC" — thus, denial to applicant of access to property in northern Cyprus falls within Turkey's "jurisdiction" for purposes of Article 1 of Convention and is imputable to Turkey - establishment of State responsibility does not require examination of lawfulness of Turkey's intervention in 1974.

B. Interference with property rights

Applicant remained legal owner of land, but since 1974 effectively lost all control, use and enjoyment of it - thus, continuous denial of access amounts to interference with rights under Article 1, Protocol No. 1 - Turkish Government have not sought to justify interference and Court does not find such complete negation of property rights justified.

Conclusion : violation (eleven votes to six).

III. Article 8 of the Convention

Since applicant did not have home on land in question, no interference for purposes of Article 8.

Conclusion : no violation (unanimously).

IV. Article 50 of the Convention

Conclusion : question reserved (unanimously).

CONSEIL DE L'EUROPE
COUR EUROPÉENNE DES DROITS DE L'HOMME

Affaire Loizidou c. Turquie
(Fond)
(40/1993/435/514)
Arrêt
Arrêt rendu par une grande chambre

Turquie - déni d'accès et ingérence dans des droits de propriété au nord de Chypre

I. Exception préliminaire du Gouvernement (incompétence ratione temporis)

Le gouvernement turc affirme notamment que la propriété de la requérante a fait l'objet d'une expropriation irréversible par le jeu («République turque de Chypre du Nord»), antérieurement à la déclaration du 22 janvier 1990 par laquelle la Turquie reconnaît la juridiction obligatoire de la Cour.

Il ressort de la pratique internationale et des résolutions de diverses organisations internationales que la communauté internationale ne tient pas la «RTCN» pour un État au regard du droit international et que la République de Chypre demeure l'unique gouvernement légitime de Chypre - la Cour ne peut ainsi attribuer une validité juridique aux fins de la Convention à des dispositions comme l'article 159 de la Constitution de 1985 - la requérante ne peut donc passer pour avoir perdu son droit sur ses biens - les violations alléguées revêtent donc un caractère continu.

Conclusion : rejet (onze voix contre six).

II. Article 1 du Protocole no 1

A. La question de l'imputabilité

Le grand nombre de soldats participant à des missions actives dans le nord de Chypre atteste que l'armée turque exerce en pratique un contrôle global sur cette région - dans les circonstances de la cause, cela engage la responsabilité de la Turquie à raison de la politique et des actions de la «RTCN» - ainsi, le déni de l'accès de la requérante à ses biens dans le nord de Chypre relève de la «juridiction» de la Turquie au sens de l'article 1 de la Convention et est imputable à la Turquie - l'établissement de la responsabilité de l'Etat n'impose pas d'examiner la légalité de l'intervention de la Turquie en 1974.

B. Ingérence dans les droits de propriété

La requérante est demeurée propriétaire légale des biens mais a perdu depuis 1974 toute maîtrise, usage et jouissance de ceux-ci - le refus continu de l'accès constitue une ingérence dans les droits garantis par l'article 1 du Protocole no 1 - le gouvernement turc n'a pas tenté d'expliquer cette ingérence et la Cour considère comme injustifiée la négation totale des droits de propriété survenue.

conclusion : violation (onze voix contre six).

III. Article 8 de la Convention

Le domicile de la requérante ne se trouvant pas sur le terrain dont il s'agit, absence d'ingérence aux fins de l'article 8.

Conclusion : non-violation (unanimité)

IV. Article 50 de la Convention

Conclusion : question réservée (unanimité).

APPENDIX IV

RESOLUTIONS ADOPTED BY THE GENERAL ASSEMBLY

1987/50 1987

RESOLUTION OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Adopted on 2nd September 1987

1987/19 Violations of human rights in Cyprus

The Sub-Commission on Prevention of Discrimination and Protection of Minorities.

Gravely concerned about the continuation of gross and systematic violations of human rights in Cyprus,

Recalling its resolutions 1 (XXVIII) and 8(XXXI) relating to the return of the refugees and displaced persons to their homes in safety and the full restoration of human rights in Cyprus, respectively, and regretting the delay in the implementation of these resolutions,

Recognizing that the Secretary-General is seized with the question of resolving the Cyprus problem,

Disturbed by the lack of any success of the Ad Hoc Committee on Missing Persons in Cyprus, after so many years of deliberations, to discover the fate of the missing persons in Cyprus,

Expressing its concern about the anguish and sorrow of the families of the missing persons of Cyprus, who have the right to know the fate of their relatives.

Further disturbed by the statement made during the consideration of this item at the present session concerning the implantation of thousands of settlers from Turkey in the occupied territories in Cyprus,

Considering that the withdrawal of all foreign armed forces from the Republic of Cyprus will contribute to the restoration of human rights and fundamental freedoms of all Cypriots,

1. Demands the full restoration of all human rights to the whole population of Cyprus, including the freedom of movement, the freedom of settlement and the right to property;

2. Expresses its great concern and anguish about the fate of the missing persons;

3. Expresses its concern also at the policy and practice of the implantation of settlers in the occupied territories of Cyprus which constitute a form of colonialism and attempt to change illegally the demographic structure of Cyprus;

4. Decides that the question of human rights in Cyprus should be considered in the context of item 4 of the agenda for its fortieth session.