European Consortium for Political Research: Nicosia 2006 Joint Sessions of Workshops

PROPERTY AND HUMAN RIGHTS IN THE CYPRUS PROBLEM

How the two sides in Cyprus have been treating the ECHR as yet another platform of political struggle

by

Kudret Özersay* and Ayla Gürel*

Draft Paper (17 April 2006)

Glossary and abbreviations

ECHR, the Court: European Court of Human Rights
The Commission: European Commission of Human Rights
IJC: International Court of Justice
RoC: Republic of Cyprus
TRNC: Turkish Republic of Northern Cyprus
Greek Cypriot government: government in southern Cyprus run by Greek Cypriots only and internationally recognised as the government of the RoC/ Cyprus, except by Turkey
Turkish Cypriot government: TRNC government/ government in northern Cyprus run by Turkish Cypriots only and recognised only by Turkey
Turkish government: government of Turkey
Greek Cypriot side: Greek Cypriot applicant and the applicant Greek Cypriot government
Turkish side: Turkish-Turkish Cypriot side, Turkish-Turkish Cypriot governments, Turkey-TRNC
Applicant government: Greek Cypriot government in the proceedings (either directly as applicant or as ‘a third party’)
Respondent government: Turkish government in the proceedings

* Department of International Relations, Eastern Mediterranean University.
* Cyprus Centre of International Peace Research Institute, Oslo.
Introduction

The property issue is undoubtedly a key aspect of the Cyprus problem. There are numerous reasons for this, two of which are immediately obvious: first, the property issue concerns the individual rights and interests of a large part of the population on both sides of the island (that is almost half of the population in the north and about one-third in the south); and second, it will inevitably be at the centre of economic and social considerations in the event of reunification.

However, a not so directly evident – though no less, if not more – important reason why the property issue has been so controversial and sensitive is because of its significance in determining the geo-political character of any future settlement of the Cyprus problem. This is apparent in the relentlessly opposing interpretations by the Greek Cypriot and Turkish Cypriot sides of the principles of ‘bizonality’ and ‘fundamental rights and freedoms’ – particularly in the context of the question of rights to ‘residency’ and ‘property’. Both of these principles, it must be recalled, have been ostensibly universally agreed parameters of a settlement in the Cyprus talks since the time of the 1977-1979 High-Level Agreements.

As everybody knows, apart from the recurrent efforts at the UN-sponsored inter-communal talks to devise a solution for it as part of a comprehensive settlement of the Cyprus problem, the property issue has also been the subject of numerous cases at the European Commission as well as the Court of Human Rights. Starting shortly after the Turkish military action of 1974, all these cases have been due to Greek Cypriot – state or individual – applications lodged against Turkey. In all of them Turkey has been found to be in violation of the Convention as regards right to property.

Given how politically sensitive the property issue is, it is no surprise that, on both sides, public representation of these judgements have been, to say the least, misleading, often turned into items of official propaganda on the Cyprus problem. For example, the Turkish side’s standard line until recently has been that these were political decisions disguised under the cover of principles of law. ‘We lost at the ECHR’ would go the explanation, ‘because Europe is politically biased against the Turkish side and in favour of the Greek Cypriot side. This is evident in the ECHR’s wrong assessment of the Cyprus problem, which is not a judicial issue but a political issue.’ On the Greek Cypriot side, on the other hand, the ECHR rulings were presented as marking a politically significant victory for Greek Cypriots. ‘A victory’ the Greek Cypriot side would say, ‘because the decisions affirm that it is an imperative of
international law that all refugees should have the unqualified right to return to their homes and regain possession of their properties. With these rulings, the idea of offering the Greek Cypriot refugees [in a solution of the property dispute as part of a comprehensive settlement of the Cyprus problem] exchange of properties or compensation in order to surrender ownership of their land is now dead.’

It is our observation of such manifestly politically motivated interpretations and exploitations of these rulings that prompted us to carry out the study on which this paper is based. This study involves a detailed examination of the current ECHR judgements on the property-related Greek Cypriot – individual or state – applications against Turkey. Our objective is to identify and discuss the way in which the two sides involved in the proceedings have attempted to advance some of the crucial aspects of their political positions as well as to demonstrate how they have regarded the property issue as a major instrument for promoting their two very different ‘national causes’. To do this, we analyse each side’s defence approach before the Court, by looking at some of the specific arguments employed, as well as the Court’s handling of these arguments.

The basic aspects of the Greek Cypriot and Turkish Cypriot positions which are relevant from the perspective of this study can be summarised as follows:1

A. Turkish Cypriot side
(i) The principle of bizonality – broadly understood – means preserving as much as possible the post-1974 de facto situation on the island, particularly regarding ‘residency’ and ‘property.’ It involves the following elements:

- Residency: the majority population in the northern zone will remain Turkish Cypriot, and in the southern zone Greek Cypriot (already realised through the implementation of the 1975 Vienna Agreement for ‘exchange of populations’).
- Property: the majority of property in the northern zone will be owned by Turkish Cypriots, and in the southern zone by Greek Cypriots (to be realised through a settlement of the property dispute on the basis of a ‘global exchange and compensation’ scheme which does not include restitution, or something very close).

(ii) Status of the TRNC and its territory

---

- The TRNC is a separate and independent state, representing the right to self-determination and sovereignty in northern Cyprus of Turkish Cypriots.
- Northern Cyprus is its territory in which the only responsible authority is the Turkish Cypriot government.

(iii) Status of the RoC

- The RoC, as established by the 1960 Accords ceased to exist in 1964. There are now (and have been in one form or another since 1964) two separate de facto Cypriot administrations/ states on the island: the TRNC and the Greek Cypriot Administration. What is at present recognised by the international community as the RoC is not the original bicomunal state but a Greek Cypriot state.
- The Greek Cypriot administration’s authority is valid only in southern Cyprus and does not extend to northern Cyprus.

B. Greek Cypriot side

(ii) The principle of bizonality – broadly understood – is a painful compromise which should be mitigated by restoring as much as possible the pre-1974 situation on the island, particularly regarding ‘residency’ and ‘property.’

- Residency: There should be freedom of settlement, including all displaced persons’ right to return to the original areas (the 1975 Vienna Agreement was to implement humanitarian measures, not for ‘exchange of populations’)
- Property: There should be full respect for property rights, including all displaced persons’ right to have their properties reinstated

(ii) Status of the RoC and its territory

- The RoC is the only lawful, internationally recognised, independent and sovereign state that exists in Cyprus. It is the state that represents the people of Cyprus which include the Greek Cypriot and Turkish Cypriot communities.
- Its territory is the whole island (except the British Sovereign Bases), with its northern part illegally invaded and occupied by Turkey since 1974.

(ii) Status of the TRNC

- The TRNC is an illegal state that resulted from illegal use of force by Turkey as part of its expansionist aspirations.
- It is a puppet state established and controlled by Turkey

In our analyses here, we talk about a certain side’s approach, attitude or defence before the Court being ‘political.’ By this we mean that the line of argumentation that side used before
the Court involves: (a) expression of some aspects of that side’s political position; and (b) no real relevance vis-à-vis the legal framework that applied (in this case, the Convention and the human rights protection mechanism). Also, in the particular context of our examination of the Court judgments, we use the expression ‘the Turkish side’ to refer to the Turkish and Turkish Cypriot governments taken together as one ‘unit.’ This is for the obvious reason that, in these proceedings, although the Turkish government alone was the ‘respondent state,’ its defence was very much dependent on the two governments acting together. Again, in the same context, the expression ‘the Greek Cypriot side’ refers to the individual applicant and the Greek Cypriot government involved in the case as a ‘third party’ taken together.

The judgments considered in this study concern four individual and one inter-state applications. The list is follows:

(i) Loizidou v. Turkey, Preliminary Objections, 23 March 1995
(ii) Loizidou v. Turkey, Merits, 18 December 1996
(iii) Loizidou v. Turkey, Just Satisfaction (Article 50), 28 July 1998
(iv) Cyprus v. Turkey (4th state application), 10 May 2001
(v) Michaelidou Developments v. Turkey, 31 July 2003
(vi) Demades v. Turkey, 31 July 2003
(vii) Xenides-Arestis, Admissibility Decision, 6 April 2005
(viii) Xenides-Arestis, Merits, 22 December 2005

The Turkish side’s political arguments

The Turkish side’s defence before the ECHR has, for the most part, been political, although, as our study of the Court judgments showed, a number of the points in that defence could have in fact been given a legal basis by connecting them to the Convention or the jurisprudence of the Court. We observed, particularly in the crucial judgments of Loizidou v. Turkey (1995, 1996 and 1998) and Cyprus v. Turkey (2001), that hardly any effort was made by the Turkish side in that direction and its political arguments, reiterated in almost every one of the cases, were almost invariably rejected by the Court. On the other hand, from 2003 onwards, a definite shift was observed in certain aspects of the Turkish side’s approach towards becoming more legal. In the following, we analyse the main political arguments of
the Turkish side. We also discuss the later process of change manifested by this side’s efforts to bring some of its political arguments into the legal framework of the Convention.

1. The Independence and sovereignty of the TRNC and Turkish Cypriot right to self-determination

The Turkish side contended that Turkey should not be held responsible for human rights violations in northern Cyprus. This was because it was the TRNC, not Turkey, that had control and authority over the area in question and hence on the issues of complaint. The main argument was that the TRNC was not a ‘puppet’ state but a democratic and constitutional state that was politically independent of all other sovereign states including Turkey. The administration in northern Cyprus was established not by Turkey but by the Turkish Cypriot people exercising its right to self-determination. The fact that there are political parties and democratic elections in northern Cyprus, and that its constitution was drafted by a constituent assembly and adopted by way of referendum gave witness to all this. Accordingly, the presence of the Turkish armed forces in northern Cyprus did not mean that Turkey had ‘jurisdiction’ there. Turkish armed forces had never had control over matters of life and property in northern Cyprus. Turkey exercised control of border areas in Cyprus jointly with or on behalf of the TRNC, which did not have sufficient forces of its own.²

This argument, developed in the Loizidou case, that Turkey should not be held responsible for violations of the Convention in the TRNC, was used in more or less the same form in the Cyprus v. Turkey case too (an in all the later cases). In the Cyprus v. Turkey case, the Turkish side additionally contended – no doubt relying on the fact that no rule of precedent exists in the ECHR system³ – that the Court was wrong to conclude earlier in the Loizidou case that the TRNC was a ‘subordinate local administration of Turkey’ and asked this decision to be corrected.⁴

The interesting point to note about the Turkish side’s argument in the Cyprus v. Turkey case was that it was backed by exactly the same reasons given earlier in the Loizidou case. This was despite the fact that: (a) in the Loizidou case, the Court had dismissed these reasons and ruled to hold Turkey responsible on account of the actual situation at that time in the TRNC; and (b) there had been no change in the actual situation in the TRNC or in Turkey’s ‘presence’ there since the Court’s judgement in the Loizidou case. In the latter case, the

---
² Loizidou v. Turkey, Merits, para. 51; and Loizidou v. Turkey, Preliminary Objections, para. 56.
⁴ Cyprus v. Turkey, para. 15 and 69.
Court’s view was that Turkey did have effective control in northern Cyprus because 30,000 personnel of its armed forces were stationed throughout the area with checkpoints on all main lines of communication.\(^5\)

In other words, in the Cyprus v. Turkey case, the Turkish side tried to divert the Court from its earlier stance by merely and persistently stating that the TRNC was independent and sovereign, and without any changes having been made in the circumstances on the ground mentioned in the Court’s previous judgments. Later in the Xenides-Arestis case, the same point was put forward by the Turkish side. This time, in order to get Turkey exonerated from the international obligations which the Court ruled it had in northern Cyprus, the Annan Plan and the connected UN process were used to contend that the TRNC was an independent and sovereign state. (See point 6 below on use of the Annan Plan.)

2. *The property issue is political and could be resolved only through the UN-sponsored inter-communal talks*

Another political point repeated by the Turkish side at most of the proceedings was that, because of the continuing negotiations to find a comprehensive settlement of the Cyprus problem, such property disputes should not be addressed in the ECHR. In this view, individuals’ access to their properties was a matter outside Turkey’s jurisdiction – a situation that was evident from the fact that this matter formed ‘one of the core items in the inter-communal talks between the Greek-Cypriots and the Turkish-Cypriots.’\(^6\)

During the discussions on Cyprus v. Turkey case, the Turkish side stated that ‘the issues of freedom of movement, freedom of settlement and the right of property could only be resolved within the framework of the inter-communal talks,’ and that because of ‘security considerations, there could be no question of a right of the displaced persons to return before an overall solution was found.’\(^7\) In another case, after repeating that the property dispute was a matter for the continuing inter-communal talks, the Turkish side maintained that the complaints of the Greek Cypriot applicant to the Court could only be resolved in negotiations ‘aimed at a bi-zonal and bi-communal settlement of the Cyprus problem.’\(^8\)

---

\(^5\) Loizidou v. Turkey, Merits, para. 16.
\(^6\) Loizidou v. Turkey, Preliminary Objections, para. 56.
\(^7\) Cyprus v. Turkey, para. 29
\(^8\) Michaelidou Developments v. Turkey, para. 24. ve Demades v. Turkey, para. 22.
The same political argument was used by the Turkish side in the Loizidou case, in the context of the discussions on the question of compensation (or ‘just satisfaction’) to be awarded to the applicant. It was argued that:

[T]he question of property rights and reciprocal compensation is the very crux of the conflict in Cyprus. These issues can only be settled through negotiations and on the basis of already agreed principles of bi-zonality and bi-communality. Inevitably the principle of bi-zonality will involve an exchange of Turkish Cypriot properties in the south with Greek Cypriot properties in the north, and, if need be, the payment of compensation for any difference. An award under Article 50 would undermine the negotiations between the two communities and would spoil the efforts to reach a settlement on the basis of agreed principles and criteria.\(^9\)

In another context, the Turkish side insisted that ‘if the applicant was held to have absolute freedom of access to her property, irrespective of the de facto political situation on the island, this would undermine the intercommunal talks, which were the only appropriate way of resolving this problem.’\(^{10}\)

This kind of argument, which involves objection to a matter of dispute being taken to an international court while the parties to the dispute are engaged in talks to find a solution, is in fact not unknown in international relations. One such example concerns the issue of the wall that Israel built in the Palestinian territory in 2004. In this case, when the UN asked the ICJ to give an advisory opinion as to whether the wall was legal or not, certain countries raised objections with the Court. The point of these objections was that such an opinion would ‘obstruct the political process of a political, negotiated solution to the Israeli-Palestinian conflict, especially in terms of the implementation of the “Roadmap”.’\(^{11}\) However, the ICJ disagreed with this view and dismissed the objections. Turkey’s objections, which were comparable, were similarly rejected by the ECHR.

On the other hand, had the Turkish side formulated its point in terms that were relevant within the legal framework of the Convention, it might have had a better chance before the Court. For example, Article 35 of the Convention stipulates about the circumstances in which applications to the Court may be found inadmissible as follows:

The Court shall not deal with any application submitted under Article 34 that … is substantially the same as a matter that has already been examined by the Court or has already been submitted to

\(^9\) Loizidou v. Turkey, Just Satisfaction, para. 21.
\(^{10}\) Loizidou v. Turkey, Merits, para. 59.
another procedure of international investigation or settlement and contains no relevant new information. [Italics added]

Moreover, the inter-communal talks conducted within the framework of the UN Secretary-General’s mission of good offices are regarded, in the UN Charter, as one of the ‘peaceful means of solving international disputes.’ However, the Turkish side made no attempt to make use of these provisions; instead, presenting its point before the Court on an entirely political basis.

In the Cyprus v. Turkey case, the Turkish side’s ‘ongoing inter-communal talks’ argument was in fact considered by the Commission, which, however, declined to attribute any validity to it. The reason given was that the talks were not effective in producing results. According to the Commission, there had been ‘no significant progress in recent years in the discussion of issues such as freedom of settlement, payment of compensation to Greek Cypriots for the interference with their property rights, or restitution of Greek-Cypriot property in the Varosha district.’ The same reason was given by the Commission in the same case when rejecting similar arguments by the Turkish side on the issue of the ‘missing persons.’

A major reason lying behind this persistent ‘ongoing inter-communal talks’ argument by the Turkish side is no doubt connected with the attitude, in the previous Greek Cypriot state applications, of the Council of Europe (CoE) Committee of Ministers – the body responsible for implementing the Commission/Court decisions. In 1976, in its report on the initial two state applications (1974 and 1975) taken together, the Commission found that Turkey was in breach of certain provisions of the Convention. The Committee of Ministers approved this report in 1979 but also made the following rather significant announcement:

[T]he enduring protection of human rights in Cyprus can only be brought about through the re-establishment of peace and confidence between the two communities; and that inter-communal talks constitute the appropriate framework for reaching a solution of the dispute. In its resolution the Committee of Ministers strongly urged the parties to resume the talks under the auspices of the Secretary-General of the United Nations in order to agree upon solutions on all aspects of the dispute. [Italics added]

In 1983, the Commission produced its report on the third state application against Turkey, where it again found that there were violations by Turkey. In this case, the Committee of

12 UN Charter, Article 33.
13 Cyprus v. Turkey, para. 33.
Ministers adopted a resolution, in 1992, to make the report ‘open to public.’ The emphasis, by this basically political body of the CoE, on the inter-communal talks as ‘the appropriate framework’ for the resolution of the dispute, must have encouraged Turkey in continuing to advance this as an argument. Indeed, in order to support its defence in the Loizidou case, the Turkish side brought this attitude of the Committee of Ministers to the attention of the Court as follows:

In fact Turkish armed forces had never exercised "jurisdiction" over life and property in northern Cyprus. Undoubtedly it was for this reason that the findings of the Commission in the inter-State cases of Cyprus v. Turkey… had not been endorsed by the Committee of Ministers whose stand was in line with the realities of the situation prevailing in Cyprus following the intervention of Turkey as one of the three guarantor powers of the Republic of Cyprus. [Italics added]

One crucial point to bear in mind here, of course, is that, at the time of the Loizidou case, the ‘compulsory jurisdiction’ of the ECHR was recognised by Turkey; whereas before that, i.e., at the time of the previous three applications, it was not, in which case the final verdict was up to the Committee of Ministers. The current acceptance by Turkey of the competence of the Court means that individuals as well as states can now appeal to the Court against Turkey. This also inevitably entails a shift in the discussions from a political to a legal ground, which can be observed in the following statement by the Court:

The Court, like the Commission, accepts the force of the applicant Government’s reasoning. It would add that this is the first occasion on which it has been seised [sic] of the complaints invoked by the applicant Government in the context of an inter-State application, it being observed that, as regards the previous applications, it was not open to the parties or to the Commission to refer them to the Court under former Article 45 of the Convention read in conjunction with former Article 48. It notes in this connection that Turkey only accepted the compulsory jurisdiction of the Court by its declaration of 22 January 1990. [Italics added]

It seems that the Turkish side either failed to comprehend the meaning of this change, or preferred not take any notice of it and tried its chance by relying on the Committee as before.

3. Not ‘individual’ but ‘general’ defence

The ‘ongoing inter-communal talks’ argument as used by the Turkish side indicates another problematic aspect of its defence, namely its incompatibility with the general rationale of the Convention. The Convention has individual rights at its core. This emphasis, which is

---

15 Loizidou v. Turkey, Preliminary Objections, para. 56.
16 Cyprus v. Turkey, para. 66.
manifested by the Court’s stance on individual rights, together with the human rights protection mechanism, was perhaps not properly understood by the Turkish side. However, it is more likely that Turkey maintained its political approach expecting ultimately to get the Committee of Ministers’ support again, as was the case of previous applications.

For instance, in the Loizidou case, the Turkish side made no attempt to discuss the specific situation of the applicant’s property with reference to, say, one of the permissible restrictions in the Convention on the right to property. Instead, it confined itself to general factors such as the on-going talks between the two communities, or the contention that ‘the taking of property in northern Cyprus started in 1974 and ripened into an irreversible expropriation by virtue of Article 159(1) (b) of the "TRNC" Constitution of 7 May 1985 … justified under the international law doctrine of necessity.’ The Court, for its part, stated explicitly that it could not accept these reasons as justifications for the acts complained of by the applicant:

Apart from a passing reference to the doctrine of necessity as a justification for the acts of the "TRNC" and to the fact that property rights were the subject of intercommunal talks, the Turkish Government have not sought to make submissions justifying the above *interference with the applicant's property rights* which is imputable to Turkey. It has not, however, been explained how the need to rehouse displaced Turkish Cypriot refugees in the years following the Turkish intervention in the island in 1974 could justify the *complete negation of the applicant's property rights* in the form of a total and continuous denial of access and a purported expropriation without compensation. Nor can the fact that property rights were the subject of intercommunal talks involving both communities in Cyprus provide *a justification for this situation under the Convention.*” [Italics added]

Property right is protected under article 1 of Protocol No. I to the Convention. On the other hand, *depriving* individuals of their property and *regulation* of the exercise of the use of property are possible only for the purposes stated in the same article. These purposes are ‘public interest’ in the case of deprivation, and ‘general interest’ in the case of regulation. Actually, in the case of Cyprus v. Turkey, as this was a ‘general’ application concerning numerous properties of similar kind, one could regard it as reasonable for Turkey to seek to justify its position by mentioning general factors such as ‘the need to rehouse the displaced Turkish-Cypriot refugees’ rather than considering the situation of any specific property. Nevertheless, the Turkish side’s approach must still be seen to be weak because it crucially

---

17 Loizidou v. Turkey, Merits, para. 35.
18 Loizidou v. Turkey, Merits, para. 64.
19 Cyprus v. Turkey, para. 188.
lacked any reference to the permissible restrictions under the Convention to the right to property. Thus the Court rejected these general arguments at every stage of the case.

More recently, however, after the payment to Ms Loizidou of the compensation ordered by the Court, the Turkish side was seen to make a new move. In the cases of Michaelidou Developments and Demades, after reiterating its above-mentioned general political arguments, it made a reference to the purpose of ‘general interest,’ for which restriction of right to property is permissible under the Convention. In this context, the Turkish side’s view, as reported by the Court, was that ‘even assuming an issue could arise under Article 1 of Protocol No. I, the control of the use of property by the “TRNC” authorities was justified in the general interest.’

It must be noted that this reference was little more that a passing remark concerning only a hypothetical situation. However limited and rudimentary in form, this inclusion of the notion of ‘general interest’ in the Turkish side’s defence could be regarded as the first important sign of change in Turkey’s approach, which became more obvious in the subsequent Xenides-Arestis case.

A point of detail worth noting here is the Turkish side’s use of the concept of ‘general interest’ in connection with the controlling of ‘the use of property.’ This connection is interesting because it necessarily entails acceptance that Greek Cypriots have not lost their property rights in the north. But it is also in contradiction with Article 159 of the TRNC Constitution (1985), according to which all Greek Cypriot properties in the north had become state property. This was underlined in the following dissenting opinion to the Michaelidou Developments judgment by the Turkish judge Feyyaz Gölcüklü, which could be seen as a message from Turkish side that it actually recognised Greek Cypriot displaced persons’ property rights:

The legislation [passed in the TRNC in June 2003 for compensating Greek Cypriots for their properties in the north] calls into question Article 159 of the Constitution, on which the Loizidou case was based, and which provided for the extinguishment of the right of property. By recognising a right to compensation for claimants with clearly established titles to property, it thereby recognises the continuing rights of property of the persons concerned.

These new arguments, which began to be raised since 2003, can be explained in connection with the establishment at that time of a ‘Property Compensation Commission’ in the TRNC, and in particular with a change of attitude on Turkey’s part from ‘being political’ to ‘playing the game according to the rules.’ After the Cyprus v. Turkey judgement in 2001,

---

21 Michaelidou Developments v. Turkey, Dissenting Opinion, para. 23.
Turkey seemed to have become fully cognizant of the message given by the Court. The message was that a ‘domestic remedy’ could be created in the TRNC to serve towards the obligations of Turkey as a state held to be responsible for protecting human rights in northern Cyprus. Accordingly, the Turkish side started developing new defence arguments as well as moving to establish the kind of ‘domestic remedy’ mechanisms indicated by the Court.

The first of these moves was the TRNC’s passing on 30 June 2003 of legislation 49/2003 (Law as to Compensation for Immovable Properties Located within the Boundaries of the Turkish Republic of Northern Cyprus, which are within the Scope of Article 159, paragraph (4) of the Constitution) and the establishment of a ‘compensation commission’ as stipulated there. This was an arrangement which foresaw financial compensation as the only means of reparation. In its decision on the admissibility of the Xenides-Arestis application, the Court gave its assessment of the proposed measure and pointed out its deficiencies, notably its failure to provide for actual restitution of property. The Court stated that:

> [T]he terms of the compensation do not allow for the possibility of restitution of the property withheld. Thus, although compensation is foreseen, this cannot in the opinion of the Court be considered as a complete system of redress regulating the basic aspect of the interferences complained of.\(^{22}\)

Following this, and taking into account the Court’s assessment of the initial reparation scheme, on 22 December 2005 the TRNC parliament passed legislation 67/2005 (Law for the Compensation, Exchange and Restitution of Immovable Properties which are within the scope of subparagraph B of paragraph (1) of Article 159 of the Constitution). The new legislation, which superseded the first one, provides for the establishment of a ‘Property Commission’ authorised to decide on various forms of redress including also restitution of property. The situation at the time of this writing is that, in the event that the Court finds this commission to be an ‘effective domestic remedy,’ it is likely to redirect to the TRNC’s new property commission the 1400 pending Greek Cypriot applications concerning property. This new approach by the Turkish side reflects a remarkable transformation, the adoption of a line of reasoning more in accordance with the legal system of the Convention than the previous one.

The Turkish side’s new approach has become evident in the Xenides-Arestis case, as one can observe in the decision on admissibility as well as the judgment on merits. On the other hand, the Turkish side has by no means abandoned its general political arguments, and has

\(^{22}\) Xenides-Arestis v. Turkey, Admissibility Decision, pp. 44-45.
continued to push its chances through that channel too. This is clear in the following two separate accounts by the Court of the Turkish side’s submissions:

Furthermore, the respondent Government aver that the applicant’s property claim can only be resolved within the framework of the island’s inter-communal talks and on the basis of a bi-zonal settlement.23

Further, [the respondent Government considered that] the award of compensation to individual applicants such as the present one would seriously hamper and prejudice negotiations for an overall political settlement, including the complex property issue which it is hoped will be solved by diplomatic means. There was also the question of what an appropriate remedy in cases of this nature would be where a significant period of time has elapsed and legitimate third party and community interests are involved. There was no entitlement to an award.24

There is yet another point to mention in connection with Turkish side’s inclination to use ‘general’ arguments. In the Xenides-Arestis case, the Turkish side tried to compare its own treatment of Greek Cypriot properties with that of the Greek Cypriot authorities’ treatment of Turkish Cypriot properties. In other words, in justifying the property regime in the TRNC, it felt the need to point out that similar practices existed in southern Cyprus too. The point was that the measures on both sides concerning ‘property expropriations’ demonstrated that the property dispute was a ‘reciprocal’ matter. Based on this, the Turkish side claimed that the issue of compensation could not be resolved through applications to the Court by individuals but only by a more viable alternative method, such as exchange of properties between the north and the south and/or compensation.25 So, it announced that Greek Cypriots should exhaust the remedies available in the TRNC, ‘just as Turkish Cypriots who have property in southern Cyprus have to exhaust domestic remedies available therein.’26

However, the ECHR generally does not take account of the situation in the other state (the ‘Cyprus Republic’) – especially if it has not previously made a judgment on that situation. For example, the Turkish side’s argument would have been more effective, had the relevant law in the south (the so-called ‘custodian law’) been examined by the Court and found compliant with the Convention. Also, such an argument would have made more sense were it used not in the Xenides-Arestis case – concerning an individual application – but rather in the ‘general’ context of the inter-state case of Cyprus v. Turkey. Indeed this shortcoming in the Turkish

---

24 Xenides-Arestis v. Turkey, Merits, para. 48.
25 Xenides-Arestis v. Turkey, Admissibility Decision, p. 27.
26 Xenides-Arestis v. Turkey, Admissibility Decision, p. 25.
side’s argument was noticed and contested by Ms Arestis’s lawyer. As the Court explained in its decision:

The applicant submits that the arguments of the Government in relation to the laws applicable to Turkish-Cypriot property in the non-occupied area of the Republic of Cyprus and acts of the Cypriot Government concerning such property, are irrelevant to the present application, that consists of an individual application regarding her own property… If persons have complaints against the Republic of Cyprus, then they should challenge any alleged human rights violations before the Cypriot courts. According to the applicant, this cannot be used as an excuse by the respondent Government for continuing to violate the applicant’s rights. [Italics added] 27

Needless to say, the Turkish side’s arguments here were rejected by the Court. Once more, we see the Turkish side failing to articulate its deliberations in a form fully in line with the terms of the Convention.

4. Greek Cypriot applications are political

One of the Turkish side’s principal arguments, used in the ‘preliminary objections’ phase of the Loizidou case was that ‘the overriding aim of the application was political propaganda.’ According to this view, the real purpose of the Greek Cypriot side in bringing the Loizidou application from the Commission to the Court was to start a debate before the Court on the status of the TRNC. This, the Turkish side claimed, ‘amounted to an abuse of process.’ 28 However, it was obvious from the start that such an argument would not have worked. For even if what the Turkish side claimed about the Greek Cypriot side’s aim was true, that would have been impossible to prove. On the other hand, a discussion on the status of the TRNC did eventually take place before the Court, which in conclusion led to inferences that the Court regarded the TRNC as the ‘subordinate local administration’ of Turkey (more on this later).

The Greek Cypriot side’s intention at that time might have indeed included triggering a discussion on the status of the TRNC, as well as obtaining a confirmation of the right of displaced person to return. The Court, however, focused on the legal side of the arguments presented before it. According to article 35 of the Convention, an application could be deemed ‘inadmissible’ on the basis of ‘an abuse of process.’ Examples cited as conditions for this are falsifying documents, misrepresenting the facts of a case, or publication of a Commission document in a newspaper in breach of the Commission’s confidentiality rules. 29 Given this, the Turkish side’s argument could not easily be considered within the framework

27 Xenides-Arestis v. Turkey, Admissibility Decision, s. 33.
28 Loizidou v. Turkey, Preliminary Objections, para. 42.
29 Leach, p. 160.
of the Convention. The Court, having made the following observation, rejected the Turkish side’s claim (which was incidentally not included in the Turkish side’s defence in later applications):

[T]he Court notes that this Government have referred the case to the Court inter alia because of their concern for the rights of the applicant and other citizens in the same situation. The Court does not consider such motivation to be an abuse of its procedures.\textsuperscript{30}

5. Not commenting on the amount of compensation

The Turkish side displayed another significant political attitude during the deliberations in the Loizidou case under article 50 of the Convention, which concerned ‘just satisfaction’. Most probably, seeing this as inconsistent with its own general political stance, the Turkish side refused to engage in discussions concerning the amount of compensation or give any comments on the amount claimed by Ms Loizidou.\textsuperscript{31} The amount of pecuniary damage claimed by Ms Loizidou was CYP 621,900, the Commission proposed CYP 100,000, and the Court awarded CYP 300,000.\textsuperscript{32} The Court intervened and reduced the amount of compensation by making its own ‘assessment on an equitable basis,’\textsuperscript{33} remarking at the same time that:

Although the Turkish Government have limited their submissions to contesting the applicant’s right to compensation and have thus not sought to challenge the applicant’s approach to the calculation of her economic loss, the Court does not for this reason alone accept without question the estimates provided by the applicant. [Italics added]\textsuperscript{34}

Despite this move by the Court, the Turkish side’s preference to remain political at this point meant that a ‘precedent’ rate for subsequent cases of similar kind was generated without a full discussion or challenge. (It is worth noting that no such award has yet been made in the other cases.)

Generally in law (including international law), ‘assessment on an equitable basis’ is a method that permits taking into account also of data from outside the realm of law, e.g., data about the economic situation in the country. Indeed, it was partly for this reason that the Court noted in a past case before it that ‘the compensation need not necessarily reflect the full value of the properties in question,’\textsuperscript{35} or in another one that ‘Article 1 (PI-1) does not, however,

\textsuperscript{30} Loizidou v. Turkey, Preliminary Objections, para 44-45.
\textsuperscript{31} Loizidou v. Turkey, Just Satisfaction, para. 29.
\textsuperscript{32} Cyprus v. Turkey, Just Satisfaction, para. 27, 30 and 34.
\textsuperscript{33} Cyprus v. Turkey, Just Satisfaction, para. 34.
\textsuperscript{34} Cyprus v. Turkey, Just Satisfaction, para. 32.
\textsuperscript{35} Leach, p. 403.
guarantee a right to full compensation in all circumstances.\textsuperscript{36} Bearing all this in mind, it is arguable that, had the Turkish side behaved differently and expressed an opinion backed by various valuation reports and other possible data, the result regarding the awarded rate would have been different. What is more, the rate awarded in the Loizidou case now inevitably stands as a ‘precedent’ also to influence the level of compensation to be awarded by the newly established TRNC ‘property commission’.

The Turkish side’s attitude to the question of compensation was the same in the cases of Demades and Michaelidou, both concluded in the summer of 2003. In both cases, the Turkish side was found to be in breach of the Convention as regards the right to property. During the compensation discussions in both cases, despite the applicants’ claims, the Turkish side made only very general comments. The Court reported this situation as follows:

The respondent Government did not address the applicant’s claims in their observations. They confined themselves to a general statement that the question of compensation for Greek-Cypriot property in northern Cyprus and Turkish-Cypriot property in southern Cyprus had to be settled through negotiations and inter-communal talks.\textsuperscript{37}

Now, this approach by the Turkish side to the question of compensation appears to have significantly changed during the discussions on the merits of the Xenides-Arestis application. Here, for the first time, the Turkish side entered into the compensation debate. It challenged the compensation claimed by the applicant by using economic as well as legal arguments. As noted by the Court:

[It] contested the applicant’s claims under this head and maintained that they were based on evaluations that were absolutely speculative and imaginary, without reference to any real data with which to make comparison. They noted that inadequate allowance had been made in respect of the instability of the property market and its susceptibility to both domestic and international influences. The method of assessment adopted by the applicant presupposed that the property would increase in value, that it could fetch the rent that the applicant had actually sought, or that she would have leased her house in normal conditions. No examples of comparative sales and rents, in the area had been supplied. The calculations were based on the assumption that at the material time there was development potential in the area where the property is situated. The assumption that the property market would have continued to flourish during the material time with sustained growth was highly questionable. In the Government’s view the Court should not accept the percentage increases put forward by the applicant. To claim damages now for loss of uses on the basis of rent that the property could have fetched if it had been leased would have meant enrichment on an inequitable basis. Nor had allowance been made for tax and other

\textsuperscript{36} James v. UK, para. 54.
\textsuperscript{37} Michaelidou Developments v. Turkey, para. 46. See also Demades v. Turkey, para. 53.
expenses which would have accrued. Further, the Government noted that in view of the fact that Turkey’s declaration under former Article 46 of the Convention recognising the Court’s jurisdiction was made on 21 January 1990, the applicant’s claim for loss could not be calculated from 1 January 1987. In this respect, they averred that if compensation were to be awarded, any loss suffered by the applicant after March 2004 was due to the actions of the Greek-Cypriot Government.\(^{38}\)

The Turkish side then asked the Court to delay awarding compensation in order to give an opportunity to the TRNC authorities ‘to consider their Compensation Law in the light of the Court’s decision on the admissibility of the instant case.’\(^{39}\) In addition to this, however, it also repeated the usual political point about how ‘the award of compensation to individual applicants such as the present one would seriously hamper and prejudice negotiations for an overall political settlement, including the complex property issue which it is hoped will be solved by diplomatic means.’\(^{40}\) As noted above, by the time of the ‘merits’ stage of the Xenides-Arestis case, the weight of the Turkish side’s defence was visibly shifting from political to legal points.

6. Making use of the Annan Plan

For a period preceding the simultaneous referenda on 24 April 2004, the ECHR proceedings were in a sense ‘frozen’. Soon afterwards they started unfolding again, but in a somewhat different way. In this new phase, the Turkish and the Greek Cypriot sides were both seen to be trying to develop arguments connected to the Annan Plan and the process of its creation. During the discussions on the admissibility of the Xenides-Arestis application, which started after the referenda, the Turkish side attempted to do this mainly in two ways.

(i) The Turkish side used the Annan Plan property provisions to supply reasons for its arguments as to why the Court should accept as a ‘domestic remedy’ their 2003 law for property compensation in force at that time – which, it should be recalled did not provide for ‘property restitution.’ These reasons, though presented in an apparently legal context, were basically political, as can be seen in the following extract from the Court’s admissibility decision:

In this connection, [the respondent government] note that the significance of the plan lies, \textit{inter alia, in the acknowledgment of the reality that the physical restitution of property is likely to be limited and is only likely to be available as part of a wider political settlement and not by way of...}

---

\(^{38}\) Xenides-Arestis v. Turkey, Merits, § 46 and 47.

\(^{39}\) Xenides-Arestis v. Turkey, Merits, para. 48.

\(^{40}\) Xenides-Arestis v. Turkey, Merits, para. 48.
individual applications to the Court. The proliferation of applications like the instant one to the Court actively undermines the possibility of reaching such a settlement whereas the availability of a remedy at a domestic level affords an opportunity to move beyond a piecemeal and partial approach to a resolution of the problems in Cyprus and would relieve the Convention system of a burden. [Italics added]  

(ii) The other attempt by the Turkish side tried to use the Annan Plan in the context of supporting its standard basic political argument: namely, that the TRNC was an independent state that was exclusively in control in northern Cyprus, that, therefore, Turkey did not exercise ‘jurisdiction’ there and the acts complained of were not Turkey’s, but the TRNC’s responsibility. According to the Turkish side, the TRNC’s independence was clearly demonstrated by the nature of the process leading up to the 24 April 2004 referenda, by the TRNC’s participation in this process with its own technical committees and by the fact that in this process the UN treated the two Cypriot sides as having ‘equal’ status.

However, as there was still no change in the situation on the ground on which the earlier decisions were based, the Court repeated its earlier position in even clearer terms as follows:

In this connection, the Court points out, firstly, that the fact that the two communities were treated as having equal status in the negotiations leading up to the referendums, does not entail recognition of the “TRNC” or confer statehood thereupon. Secondly, the Court observes that the respondent Government continue to exercise overall military control over northern Cyprus and have not been able to show that there has been any change in this respect.

As explained before, it was on the basis of its observations concerning ‘effective overall control’ that the Court had until that time held that Turkey exercised ‘jurisdiction’ in northern Cyprus. And, at the time of the discussions in question, no change had occurred or been effected as regards the situation on the ground that had led to these observations. Despite all this, the Turkish side attempted to convince the Court that its earlier ruling was erroneous. It was obvious here that the Turkish side was hoping to take advantage of the international community’s relatively more positive approach towards the Turkish Cypriot administration in the wake of the April 2004 referenda.

In the debates on the ‘admissibility’ of the Xenides-Arestis application, The Turkish side also argued that the Greek Cypriot side had to endure the consequences of rejecting the Annan Plan. As the Court noted:

41 Xenides-Arestis v. Turkey, Admissibility Decision, p. 21.
42 Xenides-Arestis v. Turkey, Admissibility Decision, pp. 11-12.
43 Xenides-Arestis, Admissibility Decision, p. 18.
In this regard, [the Turkish side] note that it is expected that this development [i.e., rejection of the Annan Plan] will lead to a new political and legal situation on the island. It is due to the rejection of the plan after a negative campaign sponsored by the Greek-Cypriot Government … that the achievement of a lasting settlement in Cyprus which would contribute to better enjoyment of human rights throughout the island has been prevented and thus, the property issue has remained unresolved. They maintain that responsibility for this should be attributed to that Government and not to Turkey. [Italics added] 44

Once more, this was essentially a piece of political reasoning linked to the outcome of the referenda on the Annan Plan. The intention was, among other things, to get the Court to reconsider its earlier – unfavourable – opinions on the status of the TRNC in this new improved atmosphere – as the Turkish side saw it. It also represented another instance of the Turkish side objecting to an application by an individual by way of making ‘general’ points.

The Court rejected all these points, reiterating much of its familiar position:

Consequently no change has occurred since the adoption of the above-mentioned judgments by the Court which would justify a departure from its conclusions as to Turkey’s jurisdiction. In this connection, the Court points out, firstly, that the fact that the two communities were treated as having equal status in the negotiations leading up to the referendums, does not entail recognition of the “TRNC” or confer statehood thereupon. Secondly, the Court observes that the respondent Government continue to exercise overall military control over northern Cyprus and have not been able to show that there has been any change in this respect. Thirdly, the fact that the Greek-Cypriots rejected the Annan Plan does not have the legal consequence of bringing to an end the continuing violation of the displaced persons’ rights for even the adoption of the plan would not have afforded immediate redress. [Italics added] 45

The Court’s final point in the above extract needs to be interpreted. It suggests that, since the adoption of the Plan would not have automatically ended all the violations, it would not have resulted in a necessary striking out of all the pending applications before the Court. This was not surprising because in the event of a settlement, the Court would have had to examine the property provisions in order to see whether they provided ‘effective domestic remedy and redress,’ under the Convention rules, that needed to be exhausted first. Indeed, the provision in the Annan Plan as to the situation of the cases pending before the ECHR was intended precisely for this purpose, as the Court seemed to have felt the need to stress. 46 The Court’s

---

44 Xenides-Arestis v. Turkey, Admissibility Decision, p. 28.
45 Xenides-Arestis v. Turkey, Admissibility Decision, p. 18:
46 Art. 37 of the Convention: Striking out applications: 1) The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that: a) the applicant does not intend to pursue his application; or b) the matter has been resolved; or c) for any other reason established by the Court, it is no longer justified to continue the examination of the application. However, the
own opinion here was not – as the Greek Cypriot side hoped it would be – that ‘the Annan Plan property provisions were in contravention with the Convention rules’ and nor did the Court sympathise with this view which was entirely political. Significantly, in the Xenides-Arestis judgment on ‘merits’ later, when repeating its opinion about the Greek Cypriot rejection of the Annan Plan, the Court left out the phrase ‘for even the adoption of the plan would not have afforded immediate redress.’

The Greek Cypriot side’s political arguments

Our study of the judgments of the Court revealed that the Greek Cypriot side’s main arguments before the Court largely relied on legal facts and claims. However, we also discovered that this side’s defence contained quite a few important political arguments too. Some of these became rather more persistent from 2001 onwards, and particularly in connection with the developments around the idea of establishment of ‘domestic remedy’ in northern Cyprus. Below is an analysis of these political arguments.

1. Turkey’s military intervention in 1974 is illegal

In the Loizidou case, during the discussions on state responsibility, the Greek Cypriot side claimed that the TRNC could pass no legal act compatible with the Convention provisions. According to the Greek Cypriot side, this was so because the 1974 Turkish military intervention, of which the TRNC was a consequence, was against international law. As reported by the Court:

[The Greek Cypriot side] stressed that the rules of international law must be taken into account when interpreting the Convention and contended that the 1985 Constitution of the “TRNC” was - as was recognised by the international community - invalid under international law, because its origin lay in the illegal use of force by Turkey.48

This was a clearly political move by the Greek Cypriot side trying to get the Court to decide on a political issue which was outside its area of competence. A similar argument was later used for the same purpose in the Xenides-Arestis case. There, the Greek Cypriot side maintained that:

---

47 Xenides-Arestis v. Turkey, Merits, para. 27.
48 Loizidou v. Turkey, Merits, para. 36.
The Turkish invasion and occupation of northern Cyprus involved and continue to involve breaches of the rules of general international law and the provisions of Article 2 (4) of the UN Charter (use of force), the provisions of which prevail over the obligations of Member States under any international agreement including the Convention (Article 103 UNC). 49

Now, when making its decisions the ECHR uses various rules or sources that are indisputably accepted in international law, generally by citing ICJ rulings. For example, in its Loizidou judgments, there are references to the ICJ’s Namibia Advisory Opinion and assessment made on this basis, or to Article 31 on the interpretation of treaties of the 1969 Vienna Convention on Treaty Law. On the other hand, one must bear in mind that the question as to whether the 1974 Turkish military intervention was legal or illegal under international law still remains unresolved. For neither the UN nor an international court has so far issued an opinion on this. Furthermore, given that the area of competence of the Court is to interpret the provisions of the Convention, for it to express opinion on a matter of dispute outside that area would mean going beyond its mandate. For this reason, the Court did not take this question up and went around it:

The Court held, in conformity with the relevant principles of international law governing State responsibility, that the responsibility of a Contracting Party could also arise when as a consequence of military action - whether lawful or unlawful - it exercises effective control of an area outside its national territory. [Italics added] 50

It also stated the following:

The Court need not pronounce itself on the arguments which have been adduced by those appearing before it concerning the alleged lawfulness or unlawfulness under international law of Turkey’s military intervention in the island in 1974 since, as noted above, the establishment of State responsibility under the Convention does not require such an enquiry. 51

2. Punishment based on political assessments

During the compensation discussions in the Loizidou case, the point about the alleged illegality of the 1974 Turkish military intervention was raised by the Greek Cypriot side again, which tried to argue that this was a factor that, in a sense, warranted ‘penalty.’ Accordingly, it maintained that this factor needed to be taken into account when deciding on the amount of compensation to be awarded. On this, the Court reported that:

In particular they contended that Turkey’s continued unlawful occupation of part of the Republic of Cyprus should not be used as a reason to reduce the amount awarded by way of pecuniary

49 Xenides-Arestis v. Turkey, Admissibility Decision, p. 29.
50 Loizidou v. Turkey, Merits, para. 52.
51 Cyprus V. Turkey, Merits, para. 56.
damage. To do so would be to permit a wrongdoer to benefit from his wrongdoing since the violation of the Convention found in the present case arose as a consequence of the unlawful invasion and occupation of part of the island by Turkey. [Italics added]52

This was a manifestly political argument because, even if the intervention was found to be lawful, this would not have altered the calculation of the compensation against the applicant. What mattered here was not whether the intervention was lawful or unlawful, but whether – as an extraordinary event – it should be taken into account when assessing, for compensation purposes, the price of the property and the income it would have brought. Notwithstanding all this, and despite the Court’s earlier refusal to take on this question, the Greek Cypriot side insisted on this argument. This suggests they had a political intention here.

The Greek Cypriot side’s attempt to get the Turkish side ‘penalised’ based on certain political and general considerations was even clearer in another of its compensation claims:

In the applicant’s submission there were also factors related to considerations of the public interest and the public order of Europe. In addition to the obligation to compensate there was in the present situation a need for a large award of non-pecuniary damages to act as an inducement to observe the legal standards set out in the Convention. [Italics added] 53

Both the Commission and the Court rejected these claims in terms which bring out the problem in this particular argument:

[The Delegate of the Commission] further considered that no punitive element should be imported into the application of Article 50 since the “public policy” considerations adduced by the applicant concerned the global situation of displaced Greek Cypriots and thus went far beyond the perimeters of the individual case.

...[L]ike the Delegate of the Commission, the Court would stress that the present case concerns an individual complaint related to the applicant’s personal circumstances and not the general situation of the property rights of Greek Cypriots in northern Cyprus. In this connection it recalls that in its principal judgment it held that “[it] need not pronounce itself on the arguments which have been adduced by those appearing before it concerning the alleged lawfulness or unlawfulness under international law of Turkey’s military intervention in the island in 1974. [Italics added] 54

Another claim to consider in this connection is the Greek Cypriot government’s demand to be ‘reimbursed the costs and the expenses in bringing the case to the Court,’ despite the fact that its involvement in the Loizidou case was a ‘third party intervention’ under Article 36 of

52 Loizidou v. Turkey, Just Satisfaction, para. 28.
53 Loizidou v. Turkey, Just Satisfaction, para. 35.
54 Loizidou v. Turkey, Just Satisfaction, para. 38 and 40.
the Convention. Again this attempt to get Turkey ‘penalised’ suggests a political intention. For in the event of such an outcome, Turkey would have been put in a situation in which it would have had to compensate not only a Greek Cypriot individual, but also the Republic of Cyprus government which it was refusing to recognise. The Court as well as the Commission objected to this claim in the following way:

[The Court] considers that [the general principle that States must bear their own costs in contentious proceedings before international tribunals] has even greater application when, in keeping with the special character of the Convention as an instrument of European public order (ordre public), High Contracting Parties bring cases before the Convention institutions … as part of the collective enforcement of the rights set out in the Convention or by virtue of Article 48 (b) in order to protect the rights of their nationals. In principle, it is not appropriate, in the Court’s view, that States which act, inter alia, in pursuit of the interests of the Convention community as a whole, even where this coincides with their own interests, be reimbursed their costs and expenses for doing so.  

3. **Attempting to criticise the Annan Plan before the Court**

In the Xenides-Arestis case, the Greek Cypriot side objected to the Turkish side’s political attempts to use the Annan Plan before the Court. On the other hand, in this connection an equally similar political attitude was adopted by the Greek Cypriot side itself.

For example, pointing out that ‘the Plan, not being in force, does not have any legal consequences relating to the issue of admissibility,’ the applicant, Ms Xenides-Arestis maintained that Turkey was misinterpreting the issue and that its submissions were all ‘political.’ However, as reported in the Court’s decision, in the final part of her defence under the heading of ‘jurisdiction’, the approach by the applicant herself was no less political:

The applicant notes that the Greek-Cypriot opinion was not necessarily opposed to the Annan Plan tout court but its precise modalities. She emphasises that she should not be punished because of the non-acceptance of the Annan Plan by the Greek-Cypriot community. There were many reasons other than the property issue which formed the basis of non-acceptance. Greek Cypriots were primarily concerned about their security given the continued presence of the Turkish armed forces. There was also little faith that the Turkish Government would actually implement the plan and grave concern about its willingness to honour its provisions. Under the plan only one third of some people’s properties would be potentially returned whilst it was uncertain whether adequate compensation would be awarded to affected persons.

---

55 Loizidou v. Turkey, Just Satisfaction, para. 48.
56 Xenides-Arestis v. Turkey, Admissibility Decision, p. 4.
57 Xenides-Arestis v. Turkey, Admissibility Decision, p. 15.
These were not the kind of statements one expected to hear from a party that held that the Annan Plan was legally inconsequential and criticised the Turkish side’s use of the Plan in its defence as ‘political.’ The attempt to justify the Plan’s rejection by the Greek Cypriots was in some way indicative of an unease about the possibility of the Court’s decision being negatively influenced by that rejection.

As for the Greek Cypriot government, it similarly started off with what could be described as legal arguments. According to these, the equal status of the two communities in the UN-led talks ‘did not and could not confer statehood’ upon the TRNC. And even if the Turkish side’s arguments were correct, ‘there would indeed be a vacuum in the system of human rights protection since there would be no possibility of access to the Court for breaches of Convention rights in northern Cyprus.’

However, following this was a description of the Greek Cypriot government’s own political views on the Annan Plan. According to these, certain provisions of the Annan Plan, including on property, were not compatible with the Convention principles. The Plan was rejected by the Greek Cypriots, they maintained, because it did not provide a just and reasonable solution. The objections to the Plan of the Greek Cypriot government and the electorate were explained as follows:

[F]irstly, the domestic remedies provided in the plan did not cover the full spectrum of the violations complained of in respect of the applicant’s property and home and were generally ineffective. No *restitutio in integrum* was provided and the damages were inadequate (being principally in the form of “property appreciation certificates” payable after twenty five years or longer from a compensation fund to be established under uncertain conditions and with no security of solvency). Secondly ... the Annan Plan provided for the constitutional division of the island of Cyprus on the basis of effective ethnic separation with major restrictions on the freedom of settlement, effective discrimination, confiscation of properties, deprivation of homes, denial of political rights and condemnation of war crimes, for example, the settlement of occupied territories through the transfer of civilian population from Turkey, an occupying state. In this connection, they draw the Court’s attention to the draft principles on the refugees’ right to return and to restitution of their properties by the UN Sub Commission on the Promotion and Protection of Human Rights.

What one observes here is a criticism of the provisions of the Annan Plan in accordance with the official Greek Cypriot government policy. The intention here might have been twofold: (a) to get a declaration from the Court to the effect that the Annan Plan provisions were incompatible with the Convention; and (b) to put it – as it were – in the Court’s ‘mind’

---

58 Xenides-Arestis v. Turkey, Admissibility Decision, p. 15.
59 Xenides-Arestis v. Turkey, Admissibility Decision, pp. 16-17.
that it should not accept as ‘domestic remedy’ similar arrangements in the future by the TRNC, thus preventing individual applications to the Court.

As in the case of the Turkish side’s use of the Annan Plan to gain political advantage, in the Greek Cypriot case too the Court was not impressed by the political censuring of the Plan. It refused to be dragged into a discussion about the compatibility of the Plan’s property provisions with the Convention principles, though it did make a general positive remark about the Annan Plan (not calculated to please the Greek Cypriot side) by noting that ‘the Annan Plan would have been a significant development and break-through in inter-communal negotiations had it come into force.’\textsuperscript{60} The reason for this behaviour of the Court is, of course, quite clear: the property provisions are in a text that is not ‘applicable law’ from the point of view of the case before it; therefore assessing the compatibility of these provisions is outside its mandate.

4. \textbf{Question of legality: the TRNC cannot devise ‘legal arrangements’ and, in particular, it cannot create ‘domestic remedy’}

In the Greek Cypriot applications, it has been generally claimed that no act of the TRNC could be allowed to have legal effect, and, as a corollary, that no means of ‘domestic remedy’ could be created by any authority in the TRNC. In the Loizidou case, for example, the argument was that ‘the 1985 Constitution of the "TRNC" was – as was recognised by the international community – invalid under international law, because its origin lay in the illegal use of force by Turkey.’\textsuperscript{61} However, as explained before, given that the premise of this argument, namely the ‘illegal use of force by Turkey,’ has not been confirmed in any international court of law or by the UN, it was not reasonable to expect the Court to arrive at conclusions on this basis. Here, it is worthwhile to look at the way in which the Court approached the issue of TRNC’s existence and legality. In the Loizidou case, the Court said the following:

\begin{quote}
In this respect it is evident from international practice and the various, strongly worded resolutions [by various international organisations]\textsuperscript{62} … that the international community does not regard the "TRNC" as a State under international law and that the Republic of Cyprus has remained the sole
\end{quote}

\textsuperscript{60} Xenides-Arestis v. Turkey, Admissibility Decision, p. 18.
\textsuperscript{61} Loizidou v. Turkey, Merits, para. 36.
\textsuperscript{62} UN Security Council Resolutions 541 (November 1983) and 550 (May 1984) declaring the proclamation of the establishment of the TRNC as ‘legally invalid’ and calling upon all States not to recognise any Cypriot State other than the Republic of Cyprus; statements by the Committee of Ministers of the Council of Europe (November 1983), the European Community and the Commonwealth Heads of Government, condemning the proclamation of statehood and calling upon all States to deny recognition to the TRNC.
legitimate Government of Cyprus - itself, bound to respect international standards in the field of the protection of human and minority rights. Against this background the Court cannot attribute legal validity for purposes of the Convention to such provisions as Article 159 of the fundamental law on which the Turkish Government rely.\textsuperscript{63} [Italics added]

This opinion of the Court on the question of legal validity of Article 159 of the TRNC constitution involves and interlinks three crucial elements: (a) the aim – nationalisation – of the article; (b) the restricted context of ‘purposes of the Convention’; and (c) the TRNC’s non-recognition as a state by the international community and, hence, in the context of international law. Had the Court not gone any further in explaining its rationale here, one could have interpreted its above opinion to mean that the Court – as the Greek Cypriot side – regarded the TRNC constitution and any other legislation made under that simply as ‘legally invalid’. In fact, the Court did go on to note the following:

The Court confines itself to the above conclusion and does not consider it desirable, let alone necessary, in the present context to elaborate a general theory concerning the lawfulness of legislative and administrative acts of the “TRNC”. It notes, however, that international law recognises the legitimacy of certain legal arrangements and transactions in such a situation, for instance as regards the registration of births, deaths and marriages, “the effects of which can be ignored only to the detriment of the inhabitants of the [t]erritory” (see, in this context, Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), [1971] International Court of Justice Reports 16, p. 56, para. 125). [Italics added]\textsuperscript{64}

While the Court regarded a general discussion on ‘legal validity’ as unnecessary, it still felt the need to mention that in such a situation (as that of the TRNC), ‘certain legal arrangements and transactions’ are recognised by international law as ‘legitimate,’ briefly stressing the relevance here of the Namibia principle. To put it in another way, according to the Court, notwithstanding the international community’s position and the resolutions of the Security Council, certain legal transactions of the TRNC could be seen as valid, e.g., in the context of ‘purposes of the Convention.’

The above statements by the Court, when put together with those in its ‘preliminary objections’ judgment on the Loizidou case, point to an interesting situation. In the Loizidou case, the Greek Cypriot side had maintained that the question of responsibility (or ‘jurisdiction’) vis-à-vis the violations complained of should be examined within the

\textsuperscript{63} Loizidou v. Turkey, Merits, para. 42.

\textsuperscript{64} Loizidou v. Turkey, Merits, para. 45.
framework of international law, and not – as the Commission had done – on the basis of the question as to whether the Turkish authorities were directly involved in the alleged violations of the Convention. According to the Greek Cypriot side:

A State is, in principle, internationally accountable for violations of rights occurring in territories over which it has physical control … [I]nternational law recognises that a State which is thus accountable with respect to a certain territory remains so even if the territory is administered by a local administration. This is so whether the local administration is illegal, in the sense that it is the consequence of an illegal use of force, or whether it is lawful, as in the case of a protected State or other political dependency. A State cannot avoid legal responsibility for its illegal acts of invasion and military occupation, and for subsequent developments, by setting up or permitting the creation of forms of local administration, however designated. Thus the controlling powers in the "puppet" States that were set up in Manchukuo, Croatia and Slovakia during the period 1939-45 were not regarded as absolved from responsibilities for breaches of international law in these administrations. [Italics added]65

This approach was, in fact, to a large extent adopted by the Court:

Bearing in mind the object and purpose of the Convention, the responsibility of a Contracting Party may also arise when as a consequence of military action - whether lawful or unlawful – it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration.66

In other words, as regards state responsibility, the key factor was ‘control’ over the territory, be it exercised ‘directly, through the state’s armed forces, or through a subordinate local administration,’ and irrespectively of whether its exercise was a consequence of a lawful or unlawful action. A state which exercised such control was responsible for violations of the Convention in that territory. On the other hand, it is important to note that the Court established no link between ‘state responsibility’ and the ‘legality’ of the local administration, i.e., the TRNC. In fact, as seen in the above extract, it arrived at its conclusion that Turkey exercised ‘overall effective control’ in northern Cyprus without specifying whether or not it considered the TRNC to be a ‘subordinate local administration’ of Turkey. As regards the issue of ‘control’, it maintained that:

It is not necessary to determine whether, as the applicant and the Government of Cyprus have suggested, Turkey actually exercises detailed control over the policies and actions of the authorities of the "TRNC." It is obvious from the large number of troops engaged in active duties

65 Loizidou v. Turkey, Preliminary Objections, para. 57
66 Loizidou v. Turkey, Preliminary Objections, para. 62.
in northern Cyprus … that her army exercises effective overall control over that part of the island. Such control, according to the relevant test and in the circumstances of the case, entails her responsibility for the policies and actions of the "TRNC" … Those affected by such policies or actions therefore come within the "jurisdiction" of Turkey for the purposes of Article 1 of the Convention. Her obligation to secure to the applicant the rights and freedoms set out in the Convention therefore extends to the northern part of Cyprus. 67

When it came to discussing the legality of administrative and legislative acts of the TRNC, however, the reference of the Court this time was not Turkey’s control in northern Cyprus, but it was –significantly – the position of de facto political entities in international law. The Court indicated that acts of such entities could be accepted as having legal effect provided that they conform with the principles of the Convention (a point initially hinted in the Loizidou case, with the matter of scope of these legal acts clarified later in the Cyprus v. Turkey case). To put it in another way, whatever its opinion on the nature of Turkey’s control in northern Cyprus or the relations between Turkey and the TRNC, the Court did not rule out possible acts and transactions by the TRNC as illegal. Rather, it approached the issue of legality of such acts and transactions from the perspective of compatibility with the Convention provisions, and of what unrecognised states can do.

The Greek Cypriot side’s approach to the ‘legality’ issue has been from a rather different viewpoint, as the discussions in the Cyprus v. Turkey case clearly demonstrate. In this case, the Greek Cypriot side interpreted the Court’s observations on ‘legality’ from its own very different angle and came up with the following pair of seemingly mutually contradictory arguments:

(i) Turkey should be regarded to be in breach of Article 13 of the Convention68 to the extent that it does not create effective domestic remedy regarding Convention violations in the TRNC.

(ii) Contrary to the findings of the Commission, the issue is not the effectiveness of ‘domestic remedies.’ The issue is the ‘context of total unlawfulness’ in which they were created, and which itself ‘stemmed directly from the aggression waged against the Republic of Cyprus by Turkey in 1974 … [and] continued to manifest itself in the continuing unlawful occupation of northern Cyprus.’ Given this situation, and the fact that the TRNC is a ‘subordinate local administration’ of

67 Loizidou v. Turkey, Merits, para. 56.
68 Article 13 – Right to an effective remedy: Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.
Turkey, ‘it was unrealistic to expect that the local … authorities could issue effective decisions against persons exercising authority with the backing of the occupation army in order to remedy violations of human rights committed in furtherance of the general policies of the regime in the occupied area.’

As seen above, the Greek Cypriot side claimed that no ‘effective domestic remedy’ could be created in the TRNC by arguing on the basis of ‘illegality’ of the TRNC, Turkey’s ‘illegal presence and control’ in northern Cyprus, and Turkey-TRNC relations. Considering the issue from a different perspective, the Court criticised the Greek Cypriot side’s approach which it noted was being pursued at the expense of contradicting one’s own arguments:

The Court does wish to add, however, that the applicant Government’s reliance on the illegality of the “TRNC” courts seems to contradict the assertion made by that same Government that Turkey is responsible for the violations alleged in northern Cyprus – an assertion which has been accepted by the Court … It appears indeed difficult to admit that a State is made responsible for the acts occurring in a territory unlawfully occupied and administered by it and to deny that State the opportunity to try to avoid such responsibility by correcting the wrongs imputable to it in its courts. To allow that opportunity to the respondent State in the framework of the present application in no way amounts to an indirect legitimisation of a regime which is unlawful under international law. The same type of contradiction arises between the alleged unlawfulness of the institutions set up by the “TRNC” and the applicant Government’s argument … that there has been a breach of Article 13 of the Convention: it cannot be asserted, on the one hand, that there has been a violation of that Article because a State has not provided a remedy while asserting, on the other hand, that any such remedy, if provided, would be null and void. [Italics added]

In addition, the Greek Cypriot side tried to prove that means of ‘domestic remedy’ to be established in the TRNC could not be considered as ‘established by law.’ This was put forward within the meaning of a different article, Article 6 of the Convention on ‘fair trial.’ According to this argument, the TRNC courts ‘could not be considered to be “established by law”’ because ‘the local administration was subordinated to and controlled by the respondent State not through the principle of legality and democratic rule but through military control and occupation.’ [Italics added]

In another argument by the Greek Cypriot side in regard to the possible ‘domestic remedy’ measures to be put in place in northern Cyprus, it was maintained that:

69 Cyprus v. Turkey, para 83:
70 Cyprus v. Turkey, para. 101.
71 Cyprus v. Turkey, para. 84.
[I]n so far as the respondent State sought to justify the interferences with the displaced persons’ property rights by invoking the derogation contained in Article 1 of Protocol No. I [of the Convention]\(^2\), the “legal” measures relied on had necessarily to be considered invalid since they emanated from an illegal secessionist entity and could not for that reason be considered to comply with the qualitative requirements inherent in the notion of “provided for by law.” [Italics added]\(^3\)

It must be pointed out, however, that in the jurisprudence of the Court, the expression ‘provided by law’ (or ‘prescribed by law’), as it appears in the Convention means that ‘the legal basis for any interference with Convention rights must be adequately accessible and formulated with sufficient precision to enable a person to regulate their conduct…The requirement for legality therefore not only requires a specific legal rule or regime authorising the interference, but also relates to the quality of the particular domestic legal provision.’\(^4\)

Furthermore, the Greek Cypriot side – in a way similar to the Turkish side’s persistence with its own ‘jurisdiction’ arguments – repeatedly claimed that ‘the Commission misconstrued the scope of the Advisory Opinion of the International Court of Justice in the Namibia case’ and tried to get this reviewed by the Court.\(^5\) The Court’s response to this claim was as follows:

The Court disagrees with the applicant Government’s criticism of the Commission’s reliance on this part of the Advisory Opinion. In its view, and judged solely from the standpoint of the Convention, the Advisory Opinion confirms that where it can be shown that remedies exist to the advantage of individuals and offer them reasonable prospects of success in preventing violations of the Convention, use should be made of such remedies. In reaching this conclusion, the Court considers that this requirement, applied in the context of the “TRNC”, is consistent with its earlier statement on the need to avoid in the territory of northern Cyprus the existence of a vacuum in the protection of the human rights guaranteed by the Convention … It appears evident to the Court, despite the reservations the Greek-Cypriot community in northern Cyprus may harbour regarding the “TRNC” courts, that the absence of such institutions would work to the detriment of the members of that community. Moreover, recognising the effectiveness of those bodies for the limited purpose of protecting the rights of the territory’s inhabitants does not, in the Court’s view

---

\(^2\) Article 1 of Protocol No. I: Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

\(^3\) Cyprus v. Turkey, Para. 180.

\(^4\) Leach, page 162.

\(^5\) Cyprus v. Turkey, para. 85.
and following the Advisory Opinion of the International Court of Justice, legitimise the “TRNC” in any way. [Italics added]\(^{76}\)

To summarise, neither the Commission, nor the Court entered into a general discussion on ‘legality.’ Instead, the Court ruled (as in the Loizidou case) that Article 159 of the TRNC constitution was ‘invalid’ in a specific sense, namely for purposes of the Convention,\(^{77}\) and that therefore displaced Greek Cypriots (including Ms Loizidou) could not, through any TRNC legislation, lose title to their properties in northern Cyprus. Moreover, it made it clear that nevertheless it would attribute ‘validity’ to certain legal measures and means of ‘domestic remedy’ established in the TRNC, provided that these conform with the purposes and the rules of the Convention. Also, interpreting the Namibia principle (to which it briefly referred in the Loizidou case) this time more widely, the Court indicated that de facto entities may be granted the authority to introduce arrangements on various matters including property:

It is to be noted that the International Court’s Advisory Opinion, read in conjunction with the pleadings and the explanations given by some of that court’s members, shows clearly that, in situations similar to those arising in the present case, the obligation to disregard acts of de facto entities is far from absolute. *Life goes on in the territory concerned for its inhabitants. That life must be made tolerable and be protected by the de facto authorities, including their courts; and, in the very interest of the inhabitants, the acts of these authorities related thereto cannot be simply ignored by third States or by international institutions, especially courts, including this one.*

It is confirmed both by authoritative writers on the subject of de facto entities in international law and by existing practice, particularly judgments of domestic courts on the status of decisions taken by the authorities of de facto entities. *This is true, in particular, for private-law relationships and acts of organs of de facto authorities relating to such relationships. Some State organs have gone further and factually recognised even acts related to public-law situations, for example by granting sovereign immunity to de facto entities or by refusing to challenge takings of property by the organs of such entities.* [Italics added]\(^{78}\)

Despite these opinions of the Court, the Greek Cypriot side was still insistent to discuss the ‘legality’ issue in the Xenides-Arestis case. In the first instance, extensive arguments were put forward by the applicant on the ‘invalidity’ of the ‘domestic remedy’ in question under international law. It was argued that the main issue was the ‘legality’ and ‘validity’ of the legislation created by, what it called, the ‘subordinate local administration.’ According to this view, the TRNC was illegal, and the Turkish invasion and continuing occupation of northern

\(^{76}\) Cyprus v. Turkey, para. 91 and 92. See also para. 96-98.
\(^{77}\) Cyprus v. Turkey, para. 186.
\(^{78}\) Cyprus v. Turkey, para. 96-97.
Cyprus involved breaches of the rules of general international law and the UN Charter.\textsuperscript{79} It was then maintained that the created remedies could not be ‘valid’ because they arose from an illegal source.\textsuperscript{80} Another argument of the applicant was that:

If the Court were to require the applicant to pursue this remedy [the system established by the TRNC’s 2003 law on property compensation], she would lose her title over her property, and thus, in effect, the purported expropriation by an illegal regime of an occupying country would be legitimised. The application of the “TRNC Law” would have the ultimate effect of creating a solution sought by the Government, which, \textit{inter alia}, entails the global exchange of properties and populations putting an end to any prospect of fulfilling her right to return and of restitution.\textsuperscript{81}

In fact, the applicant went so far as to comment that:

In any case, the Court will with no doubt accept that even Greek Cypriots who are not specialists in international law are able to recognise that an entity created and sustained as a result of the use of force has no legitimate authority.\textsuperscript{82}

The Greek Cypriot government, for its part, also argued on the basis of ‘illegality’ and incompatibility with the Convention of the remedy in question. According to these arguments, the TRNC property compensation law was incompatible with international law. Despite earlier distinctions by the Court between ‘state responsibility’ and ‘legality,’ the government maintained that

\textquote{[A]n occupying country, such as Turkey, cannot justify an interference with any property in a territory that it occupies by relying on the “public interest” exception in Article 1 of Protocol No. I where such interference arises in connection with the possession of alien property owners and is contrary to the relevant rules of international law.}\textsuperscript{83}

The Court, however, had already indicated that it was going to look at the ‘legality’ of the arrangements on property rights not with reference to Turkey, but with reference to what \textit{de facto} entities can do under international law. In addition, the Greek Cypriot government, putting forward a political argument, claimed that:

\textquote{[G]iven the history and environment of the “TRNC” and the prevailing political circumstances, to require Greek Cypriots, such as the applicant, to exhaust this remedy, would in effect require them to seek a remedy in the hands of the occupying power and thus accord implicit recognition.}\textsuperscript{84}

\textsuperscript{79} Xenides-Arestis v. Turkey, Admissibility Decision, pp. 28-29.  
\textsuperscript{80} Xenides-Arestis v. Turkey, Admissibility Decision, p. 30.  
\textsuperscript{81} Xenides-Arestis v. Turkey, Admissibility Decision, pp. 31-32.  
\textsuperscript{82} Xenides-Arestis v. Turkey, Admissibility Decision, p. 34.  
\textsuperscript{83} Xenides-Arestis v. Turkey, Admissibility Decision, p. 37.  
\textsuperscript{84} Xenides-Arestis v. Turkey, Admissibility Decision, p. 40.
The Greek Cypriot government, in a political move, also noted that it made ‘public statements, primarily through their spokesman, which have been reported in the media, regarding the property rights of their citizens, aimed at discouraging them from making applications to the commission.’ The reason for making these statements was explained to be the ‘danger … that the lodging of such applications … might seek to be exploited by Turkey as according some kind of recognition.’

Needless to say, these arguments were not accepted by the Court.

In its Xenides-Arestis case, the Court refused to discuss the legality issue despite the extensive efforts of the Greek Cypriot side, and confined itself to making references to earlier decisions. In addition, it made the following point, which closed the discussion:

Furthermore, the Court recalls the general principle referred to in its judgments in the cases of Loizidou v. Turkey … and Cyprus v. Turkey … that international law recognises the legitimacy of legal arrangements and transactions in certain situations akin to those existing in the “TRNC” and that the question of the effectiveness of these remedies provided therein had to be considered in the specific circumstances where it arose, on a case-by-case basis.

Finally, the Court did examine the ‘domestic remedy’ created by the TRNC (2003 property compensation law) solely from the perspective of compatibility with the Convention. Pointing out the deficiencies in the law under the Convention, it concluded that the law could not at this stage be regarded as ‘a complete system of redress’. The Court enumerated the deficiencies of the law in the form of recommendations, suggesting that it would consider as ‘effective domestic remedy’ another arrangement that conformed to these recommendations. This was, of course, very much in line with the concern expressed in the Court’s subsequent judgment that ‘the Court cannot ignore the fact that there are already approximately 1,400 property cases pending before the Court brought primarily by Greek-Cypriots against Turkey.’

Conclusion

In this paper, we have shown that the ECHR proceedings concerning the property-related cases have indeed been regarded by the two sides as yet another arena for their political battle, a platform for seeking international and local endorsement of their political arguments. In

---

86 Xenides-Arestis v. Turkey, Admissibility Decision, p. 44.
87 Xenides-Arestis v. Turkey, Merits, para. 38.
putting forward these – often very general – political arguments, both sides seem to have had the intention to get them confirmed by the Court, in some direct or indirect form. The Court, on the other hand, carefully manoeuvred its way around such extraneous disputations. It confined itself to ruling to uphold the core objective of the Convention, namely the protection of individual human rights, which, under the Convention and within the human rights protection mechanism associated with the Convention, crucially involves ensuring provision of remedy and redress to stop any violation, not in addition penalising the party found to be in violation of the Convention.

Stemming from their respective – seemingly irreconcilable – ‘national causes,’ the arguments of the two sides notably involved the following. For the Greek Cypriot side, the basic contention was that ‘Turkey’s military action of 1974 was illegal, and therefore the TRNC – which resulted from this action – is illegal and every legal transaction by any TRNC institution is legally invalid. Reversal of all this (which will naturally mean all displaced persons having the right to return to their original areas), is the only way to remove the current human rights violations.’ The Turkish side’s central assertion, on the other hand, was that ‘the de facto situation on the island represents the essential elements of a solution of the Cyprus problem to be found on the basis of the already agreed principles of bizonality and bicommunality. This implies that the only way to settle the property issue is through a global exchange and compensation scheme.’

We believe the following point is particularly interesting. In almost all the cases studied, the Turkish side’s defence before the court was rather general and largely based on political arguments. Until about 2003, the Turkish side did little to develop specifically legal arguments. Rather, general legal arguments were included in the Turkish side’s defence only to ‘supplement’ its essentially political line of reasoning before the Court. After 2003, however, the Turkish side started becoming more legally oriented in some of its arguments. This was seen not only in connection with the idea of ‘domestic remedy and redress’ to deal with Greek Cypriot complaints concerning property right violations, but also in the context of discussions concerning compensation.

The Greek Cypriot side, on the other hand, built up an essentially legal defence that generally remained within the framework of the Convention and the human rights protection mechanism. To that extent, the Greek Cypriot side ‘played the game according to its rules.’ However, there were a number of important political arguments in the Greek Cypriot side’s defence too. These arguments began to be more persistent from 2001 onwards, particularly
coinciding with the Court’s deliberations on the possibility of ‘domestic remedy’ measures in northern Cyprus.

At the present time, it can be said that the Turkish side is seriously trying to follow the ‘effective domestic remedy’ path indicated by the Court. The Greek Cypriot side, on the other hand seems to be sliding towards becoming more political in its arguments before the Court.