

LOIZIDOU v. TURKEY

- **Loizidou v. Turkey**, ECtHR (Grand Chamber), app. 15318/89, 18 December 1996
- **Legalities Involved:** international human rights law and public international law (UN Resolution)
- **Tool to deal with inter-legality:** VCLT (Article 31(3)(3))

SUMMARY

The case originated in an application against the Republic of Turkey by Mrs. Loizidou on the ground that following the process of Turkish occupation of Northern Cyprus in 1974, she had been deprived of her right to peacefully enjoy her property. In particular, after the Turkish occupation of the territory, all immovable properties that were found abandoned on 13 February 1975, including that of the applicant, were confiscated by the newly formed Turkish Republic of Northern Cyprus (TRNC) as of 15 November 1983 pursuant to article 159 of the TCNR constitution. On this ground, Mrs. Loizidou argued that her rights protected under ECHR's article 8 and article 1 of Protocol No.1 had been violated by the Turkish authorities.

The central issue of the case was whether Turkey had jurisdiction *ratione temporis* and *ratione loci* in the Northern part of Cyprus not only because Turkey accepted compulsory jurisdiction of the ECtHR on 22 January 1990 but also because of the existence of the TRNC. However, the TRNC was only recognized by Turkey, whereas the UN Security Council by adopting Resolution 541(1983) refused to recognize the TCNR as an independent state. On this account, one of the arguments put forward by the Turkish government was that TCNR was an independent state, which was not a party to the ECHR and thus, had legally confiscated the immovable properties located in the northern part of the island. Against this, Mrs. Loizidou argued that since the 1985 Constitution of the "TRNC" was - as recognised by the international community - invalid under international law, no effect should be given to the confiscatory provisions of the TRNC Constitution.

The court, with a view to determining whether Mrs. Loizidou was the lawful owner of the properties, even after their confiscation by virtue of Article 159 of the "TRNC" Constitution, drew on Article 31(3) of the Vienna Convention, and held the view that since

“... the international community does not regard the ‘TRNC’ as a State under international law and that the Republic of Cyprus has remained the sole legitimate Government of Cyprus ... 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” (para. 44)

“Accordingly, the applicant cannot be deemed to have lost title to her property as a result of Article 159 of the 1985 Constitution of the ‘TRNC’” (para. 46).

Having affirmed that Mrs. Loizidou was still the owner of the properties, the Court addressed the question of whether Turkey could be nevertheless held accountable for this alleged violation. In answering this question, the Court held that

*“The responsibility of Contracting States can be involved by acts and omissions of their authorities **which produce effects outside their own territory**. Of particular significance to the present case 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. 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”. (para. 52)*

Having pointed to the presence of the Turkish military in the island as an evidence of effective control, the Court stated that “its obligation to secure to the applicant the rights and freedoms set out in the Convention therefore extends to the northern part of Cyprus”. (para. 56)

“It follows from the above considerations that the continuous denial of the applicant’s access to her property in northern Cyprus and the ensuing loss of all control over the property is a matter which falls within Turkey’s “jurisdiction” within the meaning of Article 1 (art. 1) and is thus imputable to Turkey”. (para. 57)

The case was decided with the 11 to 6 majority vote and some of the dissenting opinions deserve to be mentioned. Below are the excerpts from the dissenting opinion of Judge Bernhardt joined by Judge Lopes Rocha :

“The case of Mrs Loizidou is not the consequence of an individual act of Turkish troops directed against her property or her freedom of movement, but it is the consequence of the establishment of the borderline in 1974 and its closure up to the present day”. (para. 1)

*“I share the doubts of the Court (see paragraphs 45-47 of the judgment) concerning the validity of the expropriation; however this is not decisive. Turkey has recognised the jurisdiction of the Court only "in respect of facts ... which have occurred subsequent to the date of deposit of the present declaration"; the closing of the borderline in 1974 is in my view the material fact and the ensuing situation up to the present time should not be brought under the notion of "continuing violation. Therefore, the preliminary objection *ratione temporis* raised by Turkey is in my view legally well-founded”. (para. 2)*

“Turkey can be held responsible for concrete acts done in northern Cyprus by Turkish troops or officials. But in the present case, we are confronted with a special situation: it is the existence of the factual border, protected by forces under United Nations command, which makes it impossible for Greek Cypriots to visit and to stay in their homes and on their property in the northern part of the island. The presence of Turkish troops and Turkey’s support of the "TRNC" are important factors in the existing situation; but I feel unable to base a judgment of the European Court of Human Rights exclusively on the assumption that the Turkish presence is illegal and that Turkey is therefore responsible for more or less everything that happens in northern Cyprus.” (para. 3)

From the dissenting opinion of Judge Baka:

*“I have come to the conclusion that Mrs Loizidou lost overall control of her property as a direct consequence of the Turkish military action in 1974. Since that time she has not been able to possess, to use and enjoy her property in any way nor even have access to it. It can thus be said that there has been a form of *de facto* expropriation”. (para. 2)*

*However, in the period between 1974 and 1985 the applicant still held legal title to her land. She purportedly lost ownership by the formal act of expropriation pursuant to Article 159 (1) of the "TRNC" Constitution of 7 May 1985 which sought to regularise the existing *de facto* situation”. (para.3)*

*“On the other hand, **Article 159 of the "TRNC" Constitution and certain other legal provisions cannot be completely set to one side as devoid of all effect merely on the basis of the international non-recognition of the entity in northern Cyprus**”. (para. 5)*

From the dissenting opinion of Judge Jambrek:

“The United Nations and other international policies of non-recognition of the "TRNC" are valid on an inter-State level. As a result, the "TRNC" Government cannot create legislation or bring about changes with legal effect in international law. However, it would be going too far to say that no purportedly legal acts of the "TRNC" administration are valid. For example, a marriage conducted by a "TRNC" official, and registered in the "TRNC", would have legal effect outside that "jurisdiction". Similarly, a transfer of property between private individuals in northern Cyprus, registered by an official of the "TRNC", would have legal effect elsewhere in the world”.(para. 5)

From the dissenting opinion of Judge Pettiti:

“It is true that the United Nations General Assembly has not admitted the "TRNC" as a member, but the lack of such recognition is no obstacle to the attribution of national and international powers (see paragraph 51 of the judgment). The case of Taiwan is comparable”.
(para.7)