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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

INFORMATION NOTE

**ON THE LEGAL REGIME OF THE TERRITORIES
NOT UNDER THE EFFECTIVE CONTROL
OF THE GOVERNEMENT
OF CYPRUS**

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I. Introduction

Within the framework of the preparation of the opinion on the law on occupied territories of Georgia, the rapporteurs requested Mr Nicolatos to provide information on the legal regime, notably concerning border crossing, of the territories not under effective control of the Government of Cyprus.

This document was prepared by Mr Nicolatos in response to that request and under his sole responsibility.

II. Information Note

On the 16th August, 1960, when Cyprus became an independent State the Cyprus Constitution came into force as a step in the process of the grant of independence. It came into force in accordance with an Order-in-Council of the British Government made in London on the 3rd August, 1960, and published in Supplement No. 2A of the Cyprus Gazette of the 11th August, 1960.

The population of Cyprus during British rule and at the time of its independence was composed of 82 percent of Greeks and 18 percent of Turks. The Greek community included the small Christian communities of Maronites Armenians and Latins making up approximately 2 percent of the population who opted to belong to the Greek community under the provisions of Article 2.3. of the Constitution.

The Constitution of the Republic of Cyprus, the product of the Zurich and London agreements is the supreme law of the Republic (Article 179)

Article 179

“1. This Constitution shall be the supreme law of the Republic.

2. No law or decision of the House of Representatives or of any of the Communal Chambers and no act or decision of any organ, authority or person in the Republic exercising executive power or any administrative function shall in any way be repugnant to, or inconsistent with, any of the provisions of this Constitution.”

Article 188, paragraph 1, of the Constitution provides that all laws in force on the date of the coming into operation of the Constitution shall, until amended or repealed, continue in force and shall be *“construed and applied with such modification as may be necessary to bring them into conformity with this Constitution”*.

Paragraph 4 of the same Article provides that -

“Any court in the Republic applying the provisions of any such law which continues in force under paragraph 1 of this Article, shall apply it in relation to any such period, with such modification as may be necessary to bring it into to accord with the provisions of this Constitution including the Transitional Provisions thereof”.

The expression "modification" is defined in paragraph 5 of the same Article as including "amendment, adaptation and repeal".

By this express provision in the Constitution, the laws in force in the former Colony of Cyprus were saved, subject to "such modification as may be necessary to bring them into conformity" with the Constitution.

Part II of the Constitution sets out a broad range of human rights, including all eighteen rights protected by the European Convention and its Protocols. These cover both individual and social rights such as the right to life, prohibition of torture or inhuman or degrading treatment or punishment, prohibition of slavery or forced or compulsory labour, the right to liberty and security of person, the fair and public hearing of civil and criminal trials, the right to privacy, the right to marry, the freedom of thought and expression, the right to property, the right to education and the right to effective remedy. Other rights include the right to a decent existence and social security, the right to work, the right to enter into any contract, the right to form and join trade unions, the right to strike, the right to address written petitions or complaints to the competent authorities for a remedy, and the right of equality before the law. Justice is guaranteed to any person without any direct or indirect discrimination. (Article 28).

Like many modern constitutions, that of the Republic provides for individual duties, such as the duty to contribute to the public burdens (Article 24.1) and the duty to serve a military service (Article 10.3 (b)), in addition to individual rights and liberties.

Legislative, executive and judicial authorities of the Republic are bound to secure within the spheres of their respective competence the efficient application of the provisions relating to fundamental rights and liberties. These rights cannot be regulated or restricted except by a law and for purposes expressly set out in the Constitution, for instance, where security of the Republic, constitutional order, public safety, public order or public health is threatened. Remedies for the enforcement of the fundamental rights are provided in the Constitution.

Article 61 of the Constitution provides that the legislative power of the Republic shall be exercised by the House of Representatives. The House of Representatives may delegate its power to legislate to other organs or bodies in the Republic within the accepted principles of constitutional law.

Moreover the Constitution contains provisions which establish the recognition of the Greek and the Turkish communities separately, safeguarding certain rights for each community for example the creation of two separate Communal Chambers having separate exclusive jurisdiction on certain matters, the structure of the judiciary, the rights given to the Turkish minority members of the House of Representatives in respect of certain matters and certain other powers safeguarded for the, Vice-President of the Republic etc .

Article 1 of the constitution provides that the state of Cyprus is an independent and sovereign Republic with a presidential regime, the president being Greek and the vice-president being Turkish, elected by the Greek and Turkish communities of Cyprus respectively.

According to Article 46 of the Constitution, the executive power is entrusted by the president and the vice president of the Republic.

Articles 133.1 of the Constitution provides for the establishment of "a Supreme Constitutional Court of the Republic, composed of a Greek, a Turk and a neutral judge"; and places "the neutral judge" as President of the Court.

Article 153.1 provides for the establishment of "a High Court of Justice composed of two Greek judges, one Turkish judge and a neutral judge"; and placing the "neutral judge" as President of the Court, supplies him with "two votes".

The Cyprus Constitution contains very rigid provisions for its future amendment—and even this in certain non-basic respects only. It affords no possibility for amendment as far as basic Articles are concerned. Regarding its basic provisions, in respect of matters which were incorporated from the Agreement in Zurich, including provisions such as Articles 153.1, 133.1, 159.1.2, no amendment is possible; not even by unanimous consensus of all members of the House of Representatives.

1963 inter-communal strife

At the end of 1963, inter-communal strife erupted between the two communities with grave consequences for constitutional order. Due to the upheaval in Cyprus at that time, the neutral presidents of the two highest courts resigned.

In 1964, the Turks withdrew from participation in the functions assigned to their community by the Constitution. Turkish Cypriot officials withdrew from their positions and refused to participate in the exercise of state authority. Although the Turkish judges did not join in the abstention, the neutral presidents of the highest courts resigned and could not be replaced without the participation of the Turkish vice president. The Judiciary and the State by and large were paralysed. And it made it imperative to have recourse to the law of necessity in order to secure the survival of the State.

The doctrine of necessity

The doctrine of necessity is mainly based on the maxim "salus populi est supremo lex" and the exceptional circumstances which impose a duty to take exceptional measures for the salvation of the country. It is well settled that measures taken in circumstances allegedly justifying resort to the "law of necessity" are subject to judicial scrutiny and control.

The doctrine of necessity in exceptional circumstances is an implied exception to particular provisions of the Constitution; and this in order to ensure the very existence of the State. The following prerequisites must be satisfied before this doctrine may become applicable:

- (a) An imperative and inevitable necessity or exceptional circumstances;
- (b) No other remedy to apply;
- (c) The measure taken must be proportionate to the necessity; and
- (d) It must be of a temporary character limited to the duration of the exceptional circumstances.

The Courts of justice (Miscellaneous provisions) Law (L-33/64)

The Courts of justice (Miscellaneous provisions) Law (L-33/64) was enacted to restore the functioning of the judiciary enabling it thereby to fulfill its constitutional mission. It provided for the amalgamation of the Supreme constitutional court and the High Court of Justice. As a result of this law the present Supreme Court was born having the combined jurisdiction and powers of both. Thus the division in the fields of jurisdictions of the Supreme Constitutional Court on the one hand and of the High court does no longer exist in this country. Nevertheless the procedure applicable to the institution of a recourse before the Supreme Constitutional Court and pleadings relating thereto, have been retained and have to be followed in the case of a recourse under Article 146, before the present Supreme Court

The constitutionality of law L33/64 was tested before the Supreme Court in the case of *Attorney General v Mustafa Ibrahim (1964) CLR 195(CA)*.

In March 1964 a United Nations peace keeping force, UNICYP, arrived. A Turkish Cypriot administration came into being in the area then under Turkish Cypriot control.

The Turkish Cypriot judges retired or withdrew from their positions in 1966.

The Turkish invasion

On 15th July, 1974, the Greek military junta staged a coup d' etat resulting in the overthrowing of the democratically elected government of Cyprus. A puppet government assumed power under the strong arm of the military. On 19th July, 1974, Turkey invaded the country with a massive force resulting in the occupation of part of the country. Soon after the coup government in Cyprus as well as the government of military junta in Greece collapsed, opening the way for the restoration of democracy in Greece and the restoration of the legitimate government in Cyprus.

On 14th August, 1974, the country was devastated by the second round of the Turkish invasion that ended with the military occupation of nearly 40 per cent of the country. As a consequence of the invasion and occupation, the vast majority of the population residing in the occupied area that were Greek Cypriots were forcibly ousted from their homes and ancestral land , taking refuge in the unoccupied part of Cyprus.

UN resolutions and European Commission of Human Rights

The United Nations' Security Council and General Assembly passed numerous resolutions calling the invasion deplorable and calling on the Turkish troops withdrawal. The European Commission of Human Rights confirmed flagrant violations of human rights by the invading Turkish forces in all respects.

In November 1974, the United Nations General Assembly unanimously adopted resolution 3221, with the framework for a solution to the Cyprus problem calling upon all states to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus and to refrain from all acts and interventions directed against it; It Urged the speedy withdrawal of all foreign forces and foreign military presence from the Republic of Cyprus and the cessation of all foreign interference in its affairs considering that all the refugees should return to their homes in safety and calling upon the parties concerned to undertake urgent measures to that end.

The adherence to abovementioned resolution was made mandatory when the Security Council endorsed resolution 3212(XXIX) in its own resolution S/RES/ 365 (1974) of 13 December 1974.

On 15 November 1983, the part of the Republic of Cyprus that has been under illegal Turkish domination since 1974, unilaterally declared itself independent. The "Turkish Republic of Northern Cyprus" ("TRNC"), as it calls itself, has not been recognized by any country save Turkey.

On 18 November 1983, the Security Council adopted resolution S/RES/541(1983), deploring the Declaration of the Turkish Cypriot authorities of the purported secession of part of the Republic of Cyprus; considering the Declaration referred to above as legally invalid and calling for its withdrawal;

From 1974 to the present there have been numerous resolutions, both from the General Assembly and the Security Council calling on Turkey to recognize international law and move toward solving the situation.

Refugees Right to Return Home

The violation of the fundamental human rights and liberties of citizens of Cyprus by the occupying power are reported in the various decisions of the European Court of Justice.

Loizidou v Turkey [1997] 23 EHRR 513

The first case in the European court of Human Rights is *Loizidou v Turkey [1997] 23 EHRR 513*. In *Loizidou*, the ECHR acknowledged that the northern part of Cyprus is under Turkish occupation, adjudging Turkey to pay compensation to the applicant Titina Loizidou, a Greek-Cypriot from an occupied area, for depriving her of the right to property, its enjoyment and possession.

The applicant alleged that Turkish forces had prevented her from returning to it. She alleged that Turkey was responsible for continuing violations of Article 1 of Protocol No 1 and of Article 8 of the Human Rights Convention. The majority of the Court held that that the denial of access and subsequent loss of control of the property was imputable to Turkey and that there had been a breach of Article 1 of Protocol No 1. It was held unanimously that there had been no breach of Article 8 because the applicant had not established that the property had been her home. Among other submissions Turkey relied on Article 159 of the Constitution of the TRNC. That provided that all immovable properties, buildings and installations which were found abandoned on 13 February 1975 when the Turkish Federated State of Cyprus was proclaimed or which were later considered by law as abandoned or ownerless and situated within the boundaries of the TRNC on 15 November 1983 should be the property of the TRNC, and the Land Registry Office should be amended accordingly. As to this the Court stated:

“44. In this respect it is evident from international practice and the various, strongly worded resolutions referred to above 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 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.

45. 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 recognizes 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 territory”.

Accordingly, it was held that 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’ and for the purposes of Article 1 of Protocol No. 1 of the Convention, must still be regarded to be the legal owner of the land.

In the course of its finding that there was a breach of Article 1 of Protocol No 1 the Court stated:

“62. With respect to the question whether Article 1 is violated, the Court first recalls its finding that the applicant, for purposes of this Article, must be regarded as having remained the legal owner of the land

64. 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 inter-communal talks involving both communities in Cyprus provide a justification for this situation under the Convention. In such circumstances, the Court concludes that there has been and continues to be a breach of Article 1 of Protocol No. 1.”

Similar findings were made and the juridical implications of Turkish occupation of a part of Cyprus were likewise depicted in subsequent decisions of the ECHR.

Cyprus v Turkey [2002] 35 EHRR 30

The case of *Cyprus v Turkey [2002] 35 EHRR 30* concerned a number of allegations made against Turkey by the Republic of Cyprus arising from the Turkish invasion and occupation of northern Cyprus. One issue was the homes and property of displaced persons. In paragraphs 82 to 102 of its judgment, the Court considered whether the judicial organs set up by the TRNC were to be simply disregarded. It considered the *Namibia* case and *Loizidou* in that context. It held, in paragraph 98, that they could not be simply disregarded, but whether they might afford a remedy had to be approached on a case by case basis. Under the heading of alleged violations relating to homes and property, the Court stated in paragraph 171 that Turkey did not dispute the assertion that it was not possible for displaced Greek Cypriots to return to their homes in the north. The Court held that in those circumstances the question of domestic remedies within the TRNC did not arise. The Court concluded in relation to Article 8:

“174. The Court would make the following observations in this connection: firstly, the complete denial of the right of displaced persons to respect for their homes has no basis in law within the meaning of Article 8(2) of the Convention; secondly, the inter-communal talks cannot be invoked in order to legitimate a violation of the Convention; thirdly, the violation at issue has endured as a matter of policy since 1974 and must be considered continuing.

175. In view of these considerations, the Court concludes that there has been a continuing violation of Article 8 of the Convention by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus.”

In relation to the case under Article 1 of Protocol No 1 the Court stated:

“183. The Commission, essentially for the reasons set out by the Court in the above-mentioned judgment [Loizidou], concluded that during the period under consideration there had been a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact

that Greek-Cypriot owners of property in northern Cyprus were being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights.

184. The Court agrees with the Commission's analysis. It observes that the Commission found it established on the evidence that at least since June 1989 the 'TRNC' authorities no longer recognised any ownership rights of Greek Cypriots in respect of their properties in northern Cyprus. This purported deprivation of the property at issue was embodied in a constitutional provision, 'Article 159 of the TRNC Constitution', and given practical effect in 'Law no. 52/1995'. It would appear that the legality of the interference with the displaced persons' property is unassailable before the 'TRNC' courts. Accordingly there is no requirement for the persons concerned to use domestic remedies to secure redress for their complaints."

In paragraph 186 the Court recalled the finding in *Loizidou* that title had not been lost by the operation of Article 159 of the TRNC Constitution. In paragraph 186 it stated that its reasoning in *Loizidou* applied generally to displaced Greek Cypriots who were unable to have access to their property. The Court held that there was a continuing violation of Article 1.

Xenides-Arestis v Turkey, Application no. 46347/99, on 22 December 2005.

The judgment in *Xenides-Arestis v Turkey* was delivered by the European Court of Human Rights on 22 December 2005. The applicant was a Greek Cypriot who had been forced to leave her home and property in Famagusta by Turkish military forces in August 1974. The Court recorded that on 23 April 2003 new measures were adopted by the TRNC regarding crossings between northern and southern Cyprus. It recorded that on 30 June the Parliament of the TRNC had enacted a law setting up an 'Immovable Property, Determination, Evaluation and Compensation Commission'. It recorded the failure of the Annan Plan as a result of its rejection in the Greek Cypriot referendum. It followed its decisions in *Loizidou* and *Cyprus v Turkey* and in two further cases to hold that breaches of Article 8 and of Article 1 of Protocol No 1 were made out. The Court then considered the application of Article 46 which relates to the execution of the Court's judgments. It referred to the widespread nature of the problem of Greek Cypriot property in northern Cyprus, and to the fact that the Court had approximately 1,400 property cases pending before it brought primarily by Greek Cypriots against Turkey. The Court stated:

*"39. Before examining the applicant's individual claims for just satisfaction under Article 41 of the Convention and in view of the circumstances of the instant case, the Court wishes to consider what consequences may be drawn for the respondent State from Article 46 of the Convention. It reiterates that by virtue of Article 46 of the High Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers of the Council of Europe. It follows, inter alia, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], no. 39221/98 and 41963/98, 249, ECHR 2000-VIII, and *Broniowski v. Poland* [GC], no. 31443/96, ¶ 192, ECHR 2004-V).*

40. *The Court considers that the respondent State must introduce a remedy which secures genuinely effective redress for the Convention violations identified in the instant judgment in relation to the present applicant as well as in respect of all similar applications pending before it, in accordance with the principles for the protection of the rights laid down in Article 8 of the Convention and Article 1 of Protocol No. 1 and in line with its admissibility decision of 14 March 2005. Such a remedy should be available within three months from the date on which the present judgment is delivered and redress should be afforded three months thereafter.*"

The legal framework of the Republic of Cyprus and the judicial power

The legal framework of the Republic of Cyprus

The genesis of laws, rules and regulations, is dependent on observance of the Constitution and laws made thereunder. There is no room for legitimacy outside that framework of authority. Constitutional provisions are the paramount law and supersede and prevail every any other legal provision or regulation inconsistent with them.

It follows that any legislation enacted to the extent to which interferes with fundamental rights and liberties safeguarded by the Articles to be found in Part II of the Constitution in a manner incompatible with such Articles, can only be treated as being valid if it is found that its enactment was justified by the "law of necessity" (as expounded in, inter alia, ***The Attorney-General of the Republic v. Ibrahim, 1964 C.L.R. 195, Ioannides v. The Police, (1973) 2 C.L.R. 125 and Theodorides v. Ploussiou, (1976) 3 C.L.R. 319.***)

There can be no question of subjecting, during a period of normality, the fundamental rights and liberties guaranteed in Part II of the Constitution to any limitations or restrictions other than those provided in such Part, in a manner contrary to Article 33 of the Constitution.

When the State is faced with a calamity which has surpassed the remedial scope of a Proclamation of Emergency under Article 183 of the Constitution, the State can resort to measures entailing the limitation or restriction or even deprivation of the fundamental rights and liberties guaranteed by Part II of the Constitution, even in a manner contrary to the Article 33, and that it can do so by virtue of the "law of necessity"; and, in such a case, whether one speaks of the "law of necessity" or of "reserve powers" it makes no material difference because both notions are two sides of one and the same juridical coin.

Of course, resort to any legislative measures, is subject to judicial control so as to ensure that such measures are justified by the calamity in relation to which they have been enacted.

The judicial power in the Republic

The judicial power in the Republic is exercised by the Supreme Court of Justice and such inferior Courts as may, subject to the provisions of the Constitution, be provided by law made thereunder (Article 152.1 of the Constitution).

Under section 29(1) of the Courts of Justice Law, 1960 (Law 14/60), every court in the exercise of its civil or criminal jurisdiction shall apply-

"(a) the Constitution of the Republic, the laws made thereunder and any other law becoming applicable by a Court;

(b) the laws saved under Article 188 of the Constitution subject to the conditions provided therein save in so far as other provision has been or shall be made by a law made or becoming applicable under the Constitution

(c) the common law and the doctrines of equity save in so far as other provision has been or shall be made by any law made or becoming applicable under the Constitution or any law saved under paragraph (b) of this section in so far as they are not inconsistent with, or contrary to the constitution."

The courts of the Republic of Cyprus have jurisdiction over all land within its territory, including the land within the Occupied Area - the "TRNC" remains an invalid and illegal regime without legal standing or authority.

It should also be reminded that, according to the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro principles) "all refugees and displaced persons have the right to have restored to them any housing, land or property of which they were arbitrarily or unlawfully deprived.."

Under Cyprus Law, Greek Cypriot property owners may bring legal actions before the competent Courts of the Republic against trespassers to their properties in the Turkish occupied area, claiming damages and other legal remedies available to them under civil law. Judgments issued in favour of lawful property owners shall be recognized and enforced against property/assets of the defendants/judgment debtors in any EU member State, under the provisions of EC Regulation No.44/2001.

The Orams Case

In its judgment of 19 April 2005 in the case of ***Apostolides v. Orams***, the District Court of Nicosia found the defendants liable for trespass in the property of the plaintiff in the occupied area, ordering them to demolish the villa and other buildings erected on the property, surrender vacant possession to the plaintiff and pay damages.

The judge held that by reason of the merger of the Kyrenia district with the Nicosia district in 1974 and the land at Lapithos being in the Kyrenia district, the court — that is the District Court at Nicosia, had jurisdiction to try the case. She considered the English case of *Hesperides Hotels v Muftizade* irrelevant because the court there was concerned with its jurisdiction over foreign real property, namely the hotels. Here, as she held, the court was concerned with real property over which it had jurisdiction. She cited the decision of the European Court of Human Rights, *Loizidou v Turkey* [1997] 23 EHHR 513, as authority that ownership of land in the north of Cyprus remained with its original Greek Cypriot owners. That defeated the submission that the court should take account of the de facto situation in the north. She then turned to whether Mr and Mrs Orams had shown an arguable defence. The onus to establish a good or prima facie arguable defence was on Mr and Mrs Orams. The basic argument that Mr and Mrs Orams owned the property under the title deed issued by the TRNC was answered by *Loizidou*. The judge also cited *Xenides-Arestis v Turkey*, Application no. 46347/99, judgment 22 December 2005, and other ECHR cases to like effect. She held that Mr Apostolides had not lost his right to the land and that the conduct of Mr and Mrs Orams towards the property amounted to trespass, neither 'local custom' nor the good faith of Mr and Mrs Orams could provide a defence.

Mr and Mrs Orams have appealed against the judgment of District Judge Efrem of 19 April 2005 to the Supreme Court of Cyprus but without any success.

Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Pursuant to ***EC Regulation No.44/2001***, the judgments of the civil courts of the Republic of Cyprus can be enforced in any of the member states of the European Union against the assets of the defendants in that state.

On 6 September 2006, a judge of the High Court of England issued his judgement on the Orams appeal against registration and enforcement in Britain of the Cyprus judgement in favour of Mr. Apostolides.

The High Court confirmed that the Orams were trespassers on the land of Mr Apostolides and that he, and certainly not they, remained the legal owners of the property. Therefore, anyone contemplating investing their hard earned savings on a holiday home in the Occupied Area would be advised to take note of the following points recognized by the English court in its Judgement: (i) Greek Cypriots remain the legal title holders of their properties in the occupied northern areas of Cyprus which also remain within the Republic of Cyprus (and not the illegal so called "TRNC" which is not recognised by any other country other than Turkey) - as over 95% of the land in the Occupied Area is owned by Greek Cypriots or the Greek church, it is almost certain that any person purporting to sell land in the occupied areas will not have good title;(ii) anyone illegally occupying property in the Occupied Area other than the lawful owners is guilty of trespass and can be sued in the Cyprus courts - the English Judgement has simply postponed enforcement of this particular judgement against the Orams. However, there are other avenues of enforcement available to Mr Apostolides. This judgement also does not prevent other Greek Cypriot land owners whose property is being illegally occupied from pursuing the illegal trespassers through the Cyprus courts, and enforcing them in the UK/EU;(iii) the courts of the Republic of Cyprus have jurisdiction over all land within its territory, including the land within the Occupied Area - the "TRNC" remains an invalid and illegal regime without legal standing or authority;(iv) the laws of the illegal "TRNC" cannot deprive the rightful Greek Cypriot owners of their title to their land - whatever steps the illegal "TRNC" has taken or will attempt to take either to expropriate the properties or to offer some form of compensation are and will always be legally invalid. The recognition and enforcement of the judgment of the District Court of Nicosia in the United Kingdom does not, however, require the application of the regulation in the northern part of Cyprus. Rather, it is the courts of the United Kingdom alone which require to act.

The enforcement of that judgment in the United Kingdom is also not precluded by the fact that the claims upheld in it are connected to the military occupation of Northern Cyprus. The dispute between Mr. Apostolides and Mr. and Mrs. Orams is civil in nature and falls within the scope of application of the regulation. It is only claims for damages against public authorities that are excluded by the regulation, and the present case does not involve claims of that kind.

Cyprus's Criminal Code, Cap.154.

It is also important to note that, under Cyprus's Criminal Code, Cap.154, any person who, with intent to defraud, deals in immovable property belonging to another is guilty of a felony ("fraudulent dealings in immovable property belonging to another") and is liable to imprisonment for up to seven years. Under the Law a person is deemed to be dealing in immovable property where he/she (a) sells to another, or rents to another, or mortgages to another or encumbers in any way, or makes available for use by another immovable property, or (b) advertises or otherwise promotes the sale or renting out or mortgaging or charging in any way to another of immovable property or the use thereof by another, or (c) concludes an agreement for the sale to another, or the renting out to another, or the mortgaging to another, or the charging in any way to the benefit of another, or the use by another of immovable property, or (d) accepts the immovable property which is the object of the dealing. Depending on the situation, it is also possible that European Arrest Warrants be issued against persons who may be prosecuted for the aforesaid criminal offence in the Republic.

In the light of the above and bearing particularly in mind that the right to peaceful enjoyment of one's property is an inalienable individual human right protected under the Constitution of the Republic and the European Convention on Human Rights, Greek Cypriot property owners are entitled to legal protection against any form or unlawful interference with such rights. Persons responsible for such interference run a serious risk of facing legal proceedings, either in the form of civil action or criminal prosecution, with grave consequences, as already explained above.

The Ministry of Foreign Affairs of the Republic of Cyprus conveys a strong warning message to foreign citizens who wish to travel to the occupied part of Cyprus, that staying in the listed Greek Cypriot owned hotels or in hotels which have been built on Greek Cypriot property without the consent of the owners, is illegal and contributes and/or assists in the illegal exploitation/usurpation of Greek Cypriot properties contrary to domestic and/or International Law. Such foreign citizens are, therefore, advised to seek accommodation in hotels and other establishments lawfully owned by Turkish Cypriots.

Protocol No 10 to the Treaty of Accession

It had been decided by the European Council on 13 December 2002 prior to the Treaty of Accession that 'in the absence of a settlement the application of the *acquis* to the northern part of the island shall be suspended until the Council decides unanimously otherwise, on the basis of a proposal by the Commission.' The decision was given effect by Protocol No 10 to the Treaty of Accession. The Protocol provided that 'the application of the *acquis* shall be suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control.' It is agreed that 'the *acquis*', also called 'the *acquis communautaire*', refers to the entire body of legislation of the European Union. It includes all treaties, legislation and the decisions of the European Court.

Cyprus entered into EU in 2004

The Republic of Cyprus, which acceded to European Union in 2004, has effective control over the southern area alone, while, in the northern area, the Turkish Republic of North Cyprus has established itself, even though it is not recognised by the international community for the purposes of international law except by Turkey. Since the Republic of Cyprus does not exercise sovereign jurisdiction over the northern area, the application of Community law was suspended in that area by the protocol to the Act of Accession. The suspension of Community law in the northern area of Cyprus was intended to enable the Republic of Cyprus to accede to the EU. The intention was to avoid a situation in which the Republic of Cyprus, as a Member State, infringed Community law because it could not ensure the application of Community law throughout the territory of that State.

Superiority of the European Law

Our Constitution has been recently amended (by law 127(1)/2006) giving superiority to the European Law. It provides, in essence, that no provision of the Constitution invalidates laws enacted, acts done or measures adopted by the Republic which are necessitated by the obligations of membership of the European Union, or prevents laws enacted, acts done or measures adopted by the European Union or by the Communities or by institutions thereof, or by bodies competent under the Treaties establishing the Communities, from having the force of law in the Republic. European Union Law confers rights and obligations not only on European Union institutions and member states but also on citizens and therefore it is possible for citizens to take actions concerning breaches of European Union law before national courts.

An administrative act that is based on a legal footing that contravenes EU law, it can be challenged before the Administrative Courts in the context of an application for annulment brought by the adversely affected individual.

Since Cyprus's membership of the *European Union*, national courts could refuse to apply legislation that contravened EU law. When the national judge draws the conclusion that a legislative provision infringes EC law, this would entail the annulment or invalidation of particular act or decision stemming from such legislation.

Where a national court is required to apply provisions of community law in a case before it, it may stay the proceedings and ask the Court of Justice for clarification as to the validity of the Community instrument at issue and or the interpretation of the instrument and of the Treaties. The objective of this preliminary ruling procedure is to secure a uniform interpretation of community law throughout the European Union.