Abuse of "Necessity": The Case of Cyprus and the (Mis) Management of Turkish Properties

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Abstract

Arguably the most complicated financial and political aspect of the ongoing tension between the members of the Greek and Turkish communities of Cyprus, commonly referred to as the "Cyprus Problem," is the property issue. Since July 20, 1974, around 160,000 Greek-Cypriot refugees have fled to areas south of the United Nations-controlled buffer zone and around 40,000 Turkish-Cypriots have fled north. On August 2, 1975, at the third round of the Vienna talks, an agreement was reached between the two sides for the voluntary regrouping of populations. The agreement made it possible for the Turkish and Greek-Cypriots to live in two geographically separate areas and under their own administrations. Critically, it made no provision regarding existing property rights.

The legal developments concerning the land of the Greek-Cypriot refugees in Turkish-controlled areas over the past 50 years have been subjected to intense political and legal scrutiny at the international level. This scrutiny includes some seminal judgements delivered by the European Court of Human Rights and the European Court of Justice. The same cannot be said for the southern properties the members of the Turkish community left in areas controlled by the Republic of Cyprus following the military operations in 1974. An international legal body is yet to conduct a comprehensive study and issue a ruling on the matter. This Article aims to provide insight into this complicated and politically sensitive issue.

Part I of this Article provides a general overview of the legal framework governing the matter and proceeds with a more detailed examination on the scope of Law 139/1991. Part II considers the overall

legal and procedural difficulties the Turkish-Cypriots face in pursuing judicial review proceedings against governmental authorities. Part III entails a more detailed checklist of the problematic areas under international law and examines the potential infringements of the human rights jurisprudence with a special focus on the principles on the right to free movement, respect for home and family life, rights to property and access to court, and discrimination based on residence or race. With the perspective that the identified violations cannot be justified based on an á-la-carte invocation of the "doctrine of necessity," Part IV of this Article briefly discusses the ethical and legal considerations that should be noted in regard to the custodianship status of a non-Muslim individual over the properties of Muslim pious foundations established with the objective of promoting religious and charitable activities. In conclusion, this Article assesses the statutory amendments adopted in 2010 and comments on whether they have had any practical consequences in the name of improving the legal climate for members of the Turkish community.

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Keywords

Cyprus Problem; Human Rights; Property; Turkish-Cypriot; Necessity

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Introduction

There is a difference of opinion as to when the "Cyprus Problem," as it is known in the international community, first began. For some, it was April 1, 1955: the date when certain armed elements associated with the island's Greek community commenced guerrilla warfare against the British colonial administration under the endorsement of Ethniki Organosis Kuprion Agoniston with the ultimate objective of achieving *Enosis* (or union, in English) of a future independent island with Greece.[1] For the Turkish-speaking Cypriots, it was December 21, 1963, when a civil war erupted and the bicommunal constitutional order envisaged under the 1959 London and Zurich Agreements[2] setting up an independent republic irretrievably broke down.[3] For most commentators, however, July 20, 1974, marks the start of the "Cyprus Problem," when the Turkish Armed Forces intervened militarily in

1. *What Caused The Division Of The Island Of Cyprus?*, Imperial War Museum, www.iwm.org.uk/history/what-caused-the-division-of-the-island-of-cyprus [https://perma.cc/C3BH-AM2U] (last visited Aug. 17, 2025).

2. Documents Relating to the Founding of Cyprus, Including the Treaty of Guarantee, 1959, http://www.kypros.org/Constitution/treaty.htm [https://perma.cc/4FNV-GDB2] (last visited Aug. 1, 2024).

3. For the Turkish position on the matter in general, see Zaim M. Necatigil, The Cyprus Question and the Turkish Position in International Law (2nd ed. 1993).

response to a coup d'état supported by the *junta* (a right-wing military regime) in Athens ostensibly to prevent Cyprus's annexation by, or its potential unification with, Greece.[4] Turkey feared that the local forces who gained positions of authority following the coup five days earlier on July 15, 1974, were under the thumb of the dictators in Athens and would take clear steps in the direction of *Enosis*.[5] What is indisputable, however, is the fact that the "Cyprus Problem" remains one of the oldest and most intractable issues in international politics, rivaling, among other examples, Jammu Kashmir, Korea, Taiwan, and Palestine.

Arguably, the most complicated financial and political aspect of the "Cyprus Problem" is the property issue. Since July 20, 1974, around 160,000 Greek-Cypriot refugees have fled to areas south of the United Nations-controlled buffer zone running through the center of the island, and around 45,000 Turkish-Cypriots have fled north.[6] In September 1975, during the fourth round of the Vienna talks, held in the aftermath of the war under the authority of the United Nations Secretary General and aimed at finding interim solutions to urgent humanitarian problems, the two sides met to discuss the voluntary regrouping of populations.[7] The agreement eventually reached made it possible for the Turkish and Greek-Cypriots to live in two geographically separate areas and under their own administrations, though it made no provision regarding existing property rights.[8]

Between 1974 and 1975, two different laws were passed on movable and immovable properties in Northern Cyprus. Of particular importance is Section 4 of Law No. 32/1975, which vested the "control and management" of such properties in the Ministry of Finance.[9]

In the aftermath of the unilateral declaration of independence and the proclamation of the Turkish Republic of Northern Cyprus (TRNC) in 1983, the Greek-speaking refugees of Cyprus lost legal ownership of their immovable property in the north, pursuant to Article 159 of

4. For the Greek Cypriot position, see generally Kypros Chrysostomides, The Republic of Cyprus: A Study in International Law (2000).

5. Yiannis Papadakis, *Nation, Narrative and Commemoration: Political Ritual in Divided Cyprus,* 14 His. & Anthropology 253, 255–56.

6. Mete Hatay, *Occasional Paper Series 9: The Cyprus Property Issue and the Return of Lawfare,* Peace Research Institute Oslo 3, (2024).

7. U.N. Secretary-General, *Second Interim Rep. of the Secretary-General Pursuant to Security Council Resolution 370*, U.N. Doc. S/11789/Add.1 (Sep. 10, 1975).

8. U.N. Secretary-General, *Interim Rep. of the Secretary-General Pursuant to Security Council Resolution 370*, U.N. Doc. S/11789 (Aug. 5, 1975).

9. Foreign Immovable Property (Control and Management) Law, 1975 (No. 32/1975) (enacted on Sep. 15, 1975, by the Turkish Federated State of Cyprus, which was succeeded by the Turkish Republic of Northern Cyprus on Nov. 15, 1983).

the TRNC's Constitution.[10] This conclusion is confined to the legal framework applicable in the TRNC and is not recognized internationally, as highlighted in the case of *Loizidou v. Turkey*.[11] In that case, the European Court of Human Rights (ECHR) highlighted the illegality of the proclamation of the TRNC and the nullity of the TRNC Constitution to the extent that it purported to terminate the legal rights of the Greek-Cypriot refugees over their properties in the north.[12]

From 1985 to 2003, approximately one million dönüms of land coming within the scope of said Article 159 were distributed to a large group of unrelated parties,[13] whether they be the nearly 40,000 Turkish-Cypriot refugees who were forced to abandon their immovable properties in Nicosia, Larnaca, Limassol, or Paphos Districts following the population exchange arrangement referred to earlier, the settlers from Turkey, or the members of the Turkish resistance forces who served in the troubled years of 1963–74 and their immediate family members.[14] Most of this title re-distribution was undertaken pursuant to Law No. 41/1977, which underwent multiple amendments over the years and whose terms are beyond the scope of this Article.[15]

The legal developments concerning the land of the Greek-Cypriot-refugees in the past 50 years have been subjected to intense political and legal scrutiny at the international level.[16]

However, the same cannot be said for the properties the members of the Turkish community left in areas controlled by authorities of the Republic of Cyprus following the war in 1974, as the ECHR has yet to undertake a comprehensive analysis of the matter and deliver a seminal judgement on the topic. Though there have been attempts to

10. Kuzey Kibris Türk Cumhuriyeti Anayasasi [Const. Turk. Rep. N. Cyprus] May 5, 1985, pt. 6, art. 159 (Cyprus).

11. Loizidou v. Turkey, App. No. 15318/89, 23 Eur. H.R. Rep. 513 (1997), https://hudoc.echr.coe.int/eng?i=001–58007 [https://perma.cc/N93U-V4PM].

12. *Id.* ¶¶ 44, 46.

13. Ayla Gürel & Kudret Özersay, *Cyprus and the Politics of Property*, 11 Mediterranean Politics 349, 354, 356 (2006).

14. Dönüm is an Ottoman term of measurement. It refers to a land area measuring 1,338 m^2. *See North Cyprus Real Estate Area Converter*, 101evler, https://www.101evler.com/alan-donusturucu [https://perma.cc/6HWK-KKDA] (last visited Nov. 24, 2025).

15. Settlement, Land Allocation and Equivalent Property Law, 1977 (No. 41/1977) (enacted on Aug. 3, 1977, by the Turkish Federated State of Cyprus, which was succeeded by the Turkish Republic of Northern Cyprus on Nov. 15, 1983).

16. For some of the notable judgments delivered by the European Court of Human Rights and the European Court of Justice, see, for example, Xenides-Arestis v. Turkey, App. No. 46347/99 (Dec. 22, 2005), https://hudoc.echr.coe.int/fre?i=001–78359 [https://perma.cc/A4E9-V2KG]; Demopoulos v. Turkey, App. Nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04 (Mar. 1, 2010), https://hudoc.echr.coe.int/eng?i=001–97649 [https://perma.cc/34YT-3FX3]; Case C-420/07, Apostolides v. Orams, 2009 E.C.R. I-3571.

get a case before the ECHR, the cases typically settle before trial or get dismissed. For example, the case of *Nezire Ahmet Adnan Sofi v. Cyprus* was struck off the list of cases before the ECHR following an amicable settlement reached between the applicant and the respondent state.[17] The same body also dismissed as inadmissible the test case of *Niazi Kazali and Hakan Kazali v. Cyprus* on the grounds that there were domestic remedies that were not fully exhausted by the applicants.[18] As far as the author is aware, the local procedures are still pending for many disputes. An international legal body is yet to make a comprehensive study and ruling on a case where all available local remedies have been definitively exhausted.

After the war, prominent legal researchers stated:

> The primary goals of the [Republic of Cyprus authorities following] the 1974 war were the immediate housing and vocational rehabilitation of the displaced Greek-Cypriot population and the recovery of the economy. The properties which the Turkish-Cypriots left behind when they fled or moved to the north of the island between 1963 and 1974 presented an opportunity for the government to address two issues: on the one hand, to assert its authority as the lawful government by protecting these properties from usurpation, and, on the other hand, to make use of these properties to meet the housing and vocational needs of the displaced Greek-Cypriots.[19]

Thus, on September 11, 1975, the Council of Ministers issued a general requisition order for all Turkish-Cypriot properties located in the area under its control for the purpose of their administration and their utilization, mainly for the benefit of displaced persons.[20] During the same year, a special department, the Service for the Administration of Turkish-Cypriot Properties, was set up within the Ministry of the Interior to serve the aforesaid goals.[21]

In certain instances, building settlements to house displaced persons were erected on Turkish-Cypriot land without proper expropriation

17. Sofi v. Cyprus, App. No. 18163/04 (Jan. 14, 2010), https://hudoc.echr.coe.int/fre?i=001–96984 [https://perma.cc/JA47-CRZQ].

18. Kazali v. Cyprus, App. Nos. 49247/08, 49307/08, 30792/05, 1760/05, 4080/06, 34776/06, 1545/07, 38902/05, 3240/05 (Mar. 6, 2012), https://hudoc.echr.coe.int/eng?i=001–109812 [https://perma.cc/XBU5–7E73].

19. 3 Nicos Trimikliniotis & Corina Demetriou, Int'l Peace Rsch. Inst., Cyprus Ctr., Legal Framework in the Republic of Cyprus 30 (2012).

20. *See Sofi*, App. No. 18163/04 (Jan. 14, 2010) ("An order no. 1218 of 11 September 1975 was published in the Official Gazette No. 671, placing such properties under the administration of the authorities.").

21. *See* Trimikliniotis & Demetriou, *supra* note 19, at 8. *See also* Halil v. Cyprus, App. No. 33981/96 (Dec. 7, 1999), https://hudoc.echr.coe.int/?i=001–4964 [https://perma.cc/GVX5-K6MW].

procedures; in other instances, efforts were made by the state to lawfully acquire the land from its Turkish-Cypriot owners through an amicable settlement.[22] There is little to no official statistical data on these points to precisely quantify this issue's extent. Also, there are several instances where the authorities have granted long-term leases to displaced persons residing in Turkish-Cypriot properties, which can be registered at the Lands Office.[23]

In the decades that followed 1975, the need for legislative regulation of the status of the Turkish-Cypriot properties in the south became obvious, beckoning a new law: Turkish-Cypriot Properties (Administration and Other Matters) (Temporary Provisions) Law of 1991 (L.139/1991).[24]

L.139/1991 formally appointed the Minister of the Interior of the Republic of Cyprus as the Custodian of the Turkish-Cypriot properties and vested in him the authority to administer such property while the "abnormal situation" on the island continued.[25] The term "abnormal situation" has been used to refer to the situation created as a result of the Turkish invasion, which is assumed to continue to exist until the Council of Ministers, by notification published in the Official Gazette of the Republic, appoints a date for the termination of the situation.[26] It is understood that a publication along these lines will also terminate the operation of the law under consideration.[27]

The law applies to every movable or immovable property situated in the areas under the control of the government of the Republic of Cyprus that belongs to a Turkish-Cypriot person or legal entity that does not have their primary residence there.[28] Its scope includes Evcaf

22. *Draft of Decision in Tomris ex rel. Mehmet v. Att'y Gen. (Nicosia Dist. Ct. Action No. 1046/2019) (Cyprus)*, Republic of Cyprus Council of Ministers Proposal No. 1445/2024 of Nov. 20, 2024 (excerpt from meeting minutes). A recent example concerning this is Action No. 1046/2019 before the Nicosia District Court which was settled in December 2024. As a result of the agreement reached with the registered owner permanently domiciled in Turkey and approved by the Council of Ministers, the government expropriated certain land located in the Nissou and Pera Chorio areas of Nicosia in return for €2.1 million compensation, which was promptly paid. The land in question housed temporary buildings providing accommodation to dozens of refugees and parts of it were also used for road construction.

23. *Id.*

24. Turkish Cypriot Properties (Administration and Other Matters) (Temporary Provisions) Law of 1991 (Cyprus); for an unofficial English translation of the law incorporating all amendments adopted until 2018, see http://web.archive.org/web/20220624034712/https://www.olc.gov.cy/OLC/OLC.NSF/D3F889B23F16B2DDC22587A3002D762C/$file/The%20Turkish-Cypriot%20Properties.pdf [https://perma.cc/RLQ5-BTAN] (last visited Aug. 1, 2024).

25. *Id.* ¶ 2 § 3.

26. *Id.* at "Relevant Domestic Law and Practice," ¶ 2, § 17.

27. *Id.* ¶ 2 § 17.

28. *Id.* at "Relevant Domestic Law and Practice," ¶ 2.

property, with Evcaf being the entity that supervises and manages all Muslim places of worship and public and private trusts with mostly charitable or religious objectives.[29] After the Church of Cyprus, it can be considered the second-largest landowner in the island.[30] In exercising the powers vested by this law, the Custodian has all the rights and obligations that the Turkish-Cypriot owner would have.[31] Section 6 includes numerous provisions that can be considered a non-exhaustive list of the Custodian's powers, including: (i) making arrangements, entering, terminating, or canceling contracts or undertaking obligations or charges concerning each such property;[32] (ii) selling or otherwise disposing of every property which is subject to deterioration or which, because of its nature, ought to be sold or disposed;[33] (iii) bringing or defending any legal action or reference or taking part in any proceeding concerning Turkish-Cypriot property or settling any action, reference, or any other proceeding;[34] and (iv) representing and binding the owner of any Turkish-Cypriot property before any judicial, administrative, or other authority in or outside the Republic.[35] By virtue of the provisions in Section 9, the payment of any sum due to an owner of Turkish-Cypriot property in relation to such property is suspended during the abnormal situation.[36] It is, moreover, a criminal offence to pay any debt due to a Turkish-Cypriot to any person other than the Custodian.[37]

As far as the author is aware, no other person or entity in contemporary Europe has such a degree of authority in the management and administration of properties belonging to an ethnic group. Attempts to judicially challenge the exercise of this unrivaled level of discretion have failed, barring a few exceptional instances that will be discussed in due course.

Section 3 gives discretion to the Custodian to release a property, or part of it, from their custodianship.[38] Nevertheless, the section was drafted in very flexible or vague language, with the consequence that its provisions are only "directory in nature," and the satisfaction of no single ground on its own or in combination with others entitles the

29. *See* George Karouzis, *Land Ownership in Cyprus*, Nicosia 76, 76–79 (1977).

30. *See id.* Its headquarters are currently in the Turkish controlled areas. It was operational in Cyprus well before the start of the British administration in 1878.

31. L. 139 of 1991 § 5.

32. *Id.* § 6(a)(v).

33. *Id.* § 6(a)(vi).

34. *Id.* § 6(b).

35. *Id.* § 6(c).

36. *Id.* § 9.

37. *Id.* § 15(1)(b).

38. *Id.* § 3.

Turkish-Cypriot registered owner to an automatic, compulsory release of their property.[39] In practice, however, there is one clearly indispensable requirement to be fulfilled before release can be considered an option: the Turkish-Cypriot owner or their successors in title must not occupy property belonging to a Greek-Cypriot in the north.

The same Section 3 states that the following factors shall, inter alia, count positively toward restoring the property to its owner: (i) when the property came under the control of the Custodian, the owner had their habitual residence abroad where they had travelled to at any time before or after the Turkish invasion of 1974 and the said owner continues to reside there, has returned, or is due to return from abroad for permanent settlement in the areas controlled by the Republic; (ii) after the property came under the control of the Custodian, the Turkish-Cypriot owner settled permanently in the south and continues to reside there uninterruptedly; and (iii) the property was the owner's residence prior to the Turkish invasion and the owner intends to use it again as their residence and to settle in the Republic-controlled areas.[40]

Based on observations made during their legal practice and the private settlements they negotiated with the officers of the Custodian, the author asserts that this provision and the power included therein are typically invoked successfully where: (i) as stated before, the Turkish-Cypriot owner or their heirs or successors in title do not occupy property belonging to a Greek-Cypriot in the north; (ii) the applicant has left Cyprus and been domiciled overseas before July 20, 1974; and (iii) the Greek-Cypriot refugee, if any, who has been assigned the possession of the property in question by the Custodian at an earlier time can be relocated elsewhere within a reasonable period and without much difficulty and financial burden to their immediate family and the government.[41]

Unless all three conditions apply simultaneously, release is refused or unduly delayed and L.139/1991 continues to be fully enforced, resulting in restrictions on registered owners' ability to exercise the property rights ordinarily attached to their ownership. In other words, the registered owner cannot: (i) enjoy and recover physical possession of their immovable property; (ii) rent; (iii) let; (iv) mortgage; (v) exchange; (vi) develop or alienate the property to any person of their choice at fair market prices; or (vii) receive any remedy or compensation from

39. *Id.*

40. *Id.*

41. For precedent where all these criteria were satisfied and the property under consideration was successfully released from custodianship, see Adnan *ex rel.* Rifat v. Att'y Gen., (Apr. 3, 2015) Case No. 3945/2012 (Larnaca Dist. Ct.) (Cyprus).

the government, a public body, or other legal entity for its previous confiscation or exclusive past physical use or possession of their property, unless the confiscation was for a purpose that does not benefit the registered property owner directly. Although, on paper, there are no major legal or procedural impediments in the devolution of a property to another descendant or relative through gift or the operation of the normal laws of inheritance, the new registered owner's residual rights are subject to L.139/1991 and the overriding authority of the Custodian.

A special fund under the name "Fund of Turkish-Cypriot Properties" (Fund) was created by this law to effectuate its purposes.[42] The Fund is under the administration of the Custodian and audited by the Auditor-General of the Republic each year.[43] All receipts of money from the properties covered by the law are deposited in the Fund, including, chiefly, the rent proceeds received by the Ministry pursuant to the contracts the Custodian signed with the refugees or other entities.[44] Expropriation proceeds deemed appropriate by the Custodian, whose duties include agreeing to measures of expropriation on behalf of the rightful owner, are also deposited occasionally. In practice, the government of the Republic of Cyprus relies on the abnormal situation provision to delay or avoid the release of any sums out of the Fund to the registered owner(s) or heir(s) of the property in question.

A common complaint observed in most cases filed is that the rental rates or expropriation sums agreed to by the Custodian are a mere fraction of the objective market values.[45] The Custodian of the Turkish-Cypriot properties is "leasing" them to the refugees but has repeatedly been accused of mismanagement and favoritism.[46] Complaints have also included reports of cases where the best property had been leased to those with connections.[47] To give a concrete example, during a radio appearance in late 2022, the then Minister of the Interior Nicos Nouris admitted there was a case in Polis Chrysochou where an individual had been granted an agricultural property of 700,000 square meters at

42. L. 139 of 1991, § 11.

43. *Id.* § 12.

44. *Id.* § 11(1).

45. *See generally Government Raises Rents Sixfold on Turkish Cypriot Properties Under New Reforms*, PHILENEWS (July 11, 2025), https://in-cyprus.philenews.com/insider/cyprus-raises-rents-turkish-cypriot-properties-management-reforms/ [https://perma.cc/MLU3–3T9Z*]*.

46. *Id.*

47. *See generally* Constantinos Tsindas, *New Regulations Put an End to Turkish-Cypriot Property Grab as Interior Ministry Under More Scrutiny*, PHILENEWS (May 1, 2025), https://in-cyprus.philenews.com/local/new-regulations-put-an-end-to-turkish-cypriot-property-grab-as-interior-ministry-under-more-scrutiny [https://perma.cc/79VN-JUGU*]*.

an annual rental price of only €50.[48] On another occasion, he cited an example of an individual who pays €28 for 49,000 square meters of land.[49] At the time of this writing, an overhaul of the Fund's operation and supervision, including certain matters pertaining to refugee entitlements, was being discussed.

As a former colony of the British Empire, the legal system of the island has been heavily influenced by the English legal principles of common law and equity.[50] The judiciary is bound to apply these principles in the absence of any express conflicts with their Constitution or other laws adopted or given effect to by their legislative body.[51] All of the treaties, conventions, and agreements acceded to by the Republic of Cyprus in accordance with their Constitution have, after their publication in the official Gazette of the Republic, superior force to any municipal law if such treaties, conventions, or agreements are applied by the other party thereto.[52] Starting from 1962, the Republic of Cyprus has ratified the European Convention on Human Rights (the Convention) and nearly all of its additional protocols, including those that address the protection of property rights and freedom of movement.[53]

48. Nikolaos Prakas, *Revisions to Law on Turkish Cypriot Properties to be Tabled to Parliament*, Cyprus Mail, (Sep. 16, 2022, 4:18 PM), https://cyprus-mail.com/2022/09/16/revisions-to-law-on-turkish-cypriot-properties-to-be-tabled-to-parliament/ [https://perma.cc/QPA8-ZMG2].

49. *Overhaul in the Works for Management of Turkish Cypriot Properties*, Cyprus Mail, (May 14, 2022, 4:28 AM), https://cyprus-mail.com/2022/05/14/overhaul-in-the-works-for-management-of-turkish-cypriot-properties/ [https://perma.cc/A49Y-L6EG].

50. Though not formally binding, the decisions rendered by the courts of England are given a lot of consideration and legal weight by the local courts in interpreting and applying laws in general or while rendering rulings in areas not covered by the existing laws of Cyprus. Occasionally, judgements of the courts in the United States, Canada, or Australia have also been quoted as persuasive authority on certain legal matters. *See* Andreas Neocleous, Neocleous's Introduction to Cyprus Law, 137 (3d ed. 2010).

51. *See* The Courts Law of 1960, No. 14/1960, § 29(1)(c) (Cyprus).

52. *See* Συνταγμα της Κυπριακης Δημοκρατιας [Const. Rep. Cyprus] Aug. 16, 1960, pt. 12, art. 169(3) (Cyprus) [hereinafter Const. Rep. Cyprus], https://www.olc.gov.cy/olc/olc.nsf/26097CAF0B50C8DCC2258C190023A082/$file/CONSTITUTION.pdf [https://perma.cc/SXR6-N68F] (English translation and consolidation published Jan. 2025).

53. The additional protocols to the European Convention on Human Rights include Protocol 1 on right to property; Protocol 4 on civil imprisonment, free movement, expulsion; Protocol 6 on restriction of the death penalty; Protocol 7 on crime and family; Protocol 11—superseding Protocols 2, 3, 5, 8, 9, and 10—on the establishment of a new procedural mechanism for the implementation and enforcement of the Convention and its supervision; Protocol 12 against discrimination; Protocol 13 on the complete abolition of the death penalty; and Protocol 14 on the filtering out of certain cases that are broadly similar to those brought previously against the same member state. *See* Convention for the Protection of Human Rights and Fundamental Freedoms: Protocols, available at https://www.coe.int/en/web/portal/home?p_p_id=com_liferay_journal_web_portlet_JournalPortlet&p_p_lifecycle=0&p_p_state=pop_up&p_p_mode=view&_com_liferay_journal_web_portlet_JournalPortlet_groupId=2657384&_

Following the breakdown of the bicommunal constitutional framework after December 21, 1963—for reasons that are beyond the scope of this Article[54]—the government of the Republic of Cyprus, dominated almost entirely by members of the Greek community, adopted numerous laws and measures that appeared to derogate expressly or implicitly from many of the constitutional and legislative provisions then in force. In the leading case of *Ibrahim*, dated 1964, the Supreme Court of Cyprus justified this situation by ruling that the functioning of the state must continue on the basis of the "doctrine of necessity."[55] The Greek-Cypriot judiciary found the doctrine of necessity to be the most suitable method to address the crisis of the functioning of the Courts and, ultimately, the functioning of the state itself.[56] In summary, it was held that the overriding need to preserve the state justified dispensing with the obligation to adhere to numerous constitutional provisions necessitating the cooperation and joint involvement of members of the two communities in the maintenance of state institutions verbatim.[57] The author observes that, a decade later, this doctrine was extended to cover the measures adopted to address the circumstances after the Turkish intervention.

The unprecedented aspects of L.139/1991 have exposed it to legal challenges at the local level. Nevertheless, the Supreme Court of the Republic has continually justified its constitutionality, relying on the doctrine of necessity.[58] It is the view of the author that, in objective

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54. For a summary of the different positions, see Necatigil, *supra* note 3 (discussing the Turkish position); Chrysostomides, *supra* note 4, at 375–89 (discussing the Greek-Cypriot position).

55. *See* Att'y Gen. v. Ibrahim, [1964] Cyprus L. Reps. 195 (Cyprus).

56. *Id.* at 197.

57. *Id.* at 264–65.

58. *See* Antonakis Chr. Solomonides Ltd. v. Att'y Gen., (2003) 1 A.A.D. 1275 at 1278; Kitsi v. Att'y Gen., (2001) 1 A.A.D. 1077 at 1088.

terms, L.139/1991 runs counter not only to the basic tenets of common law and equity, but to international human rights law, general principles of statutory interpretation, and the jurisprudence on "necessity."

We will now examine the main sticking points in turn. This analysis will rely extensively on the outcome of local cases initiated by Turkish-Cypriots who had not written off their properties in the government-controlled areas and who had not benefited materially or at all from Greek-Cypriot land in the north. These Turkish-Cypriots had an increased interest in the fate of their properties after restrictions on barricade crossings and intra-island travel were lifted around April 24, 2003.[59] Based on personal observation as a Cypriot resident in the island, Greek-Cypriots could not cross to the north and the Turkish-Cypriots could not cross to the south until that date, barring limited instances where special permissions were obtained to attend political meetings or seek medical treatment. From 2003 onwards, the owners with property rights could observe firsthand the physical condition and the fate of their properties.

I. L.139/1991 Held to Have Broader Applicability than Originally Intended: Taking over of Turkish-Cypriot Properties Many Years After 1974

A. The Scope of the Act Clarified by Its Preamble and the Circumstances Prevailing in the Period Leading to Its Adoption

Many statutes have preambles in which the main objects of the Act are set out, and these are legitimate aids in construing the enacting parts.[60] The important role of the preamble in statutory interpretation has been authoritatively stated by Lord Chief Justice Tenterden in an early case:

> On a sound construction of every Act of Parliament, I take it the words of the enacting part must be confined to that which is the plain object and general intention of the legislature in passing the Act, and that the preamble affords a good clue to discover what that object was.[61]

59. Reuters, *Thousands Cross Cypriot Borders After Restrictions Are Lifted,* N.Y, Times (Apr. 25, 2003), https://www.nytimes.com/2003/04/25/world/thousands-cross-cypriot-borders-after-restrictions-are-lifted.html [https://perma.cc/Y54K-9UWD].

60. P. St. J. Langan, Maxwell on the Interpretation of Statutes 6–7 n. 32 (12th ed. 1969) (citing The Sussex Peerage Case (1844) 8 Eng. Rep. (HL) 1034, 1056; 11 Cl. & Fin. 85, 143; Turquand v. Bd. of Trade (1886) 11 App. Cas. 286 (HL) (Lord Selbourne L.C.), *reprinted in* [1886–90] All E.R. 567, 568; Powell v. Kempton Park Racecourse Co. [1899] AC 143 (HL) at 157, *reprinted in* [1895–99] All E.R. Rep. Ext. 1488, 1491).

61. Halton v. Cove (1830) 109 Eng. Rep. 887, 895.

In *Attorney-General v. H.R.H. Prince Ernest Augustus of Hanover*, the House of Lords also highlighted the role that the preamble may play in the interpretation of legislation.[62] There, Lord Normand said:

> When there is a preamble it is generally in its recitals that the mischief to be remedied and the scope of the Act are described.
>
> . . . .
>
> The courts are concerned with the practical business of deciding a *lis*, and when the plaintiff puts forward one construction of an enactment and the defendant another, it is the court's business in any case of some difficulty, after informing itself of what I have called the legal and factual context including the preamble, to consider in the light of this knowledge whether the enacting words admit of both the rival constructions put forward. If they admit of only one construction, that construction will receive effect even if inconsistent with the preamble, but if the enacting words are capable of either of the constructions offered by the parties, the construction which fits the preamble may be preferred.[63]

The *Cope v. Doherty* court also emphasized the heavy interpretative weight of the circumstances surrounding the passage of an Act.[64]

The preamble of L.139/1991 reads as follows:

> Whereas, because of the massive, enforced transfer of the Turkish-Cypriot population as a result of the Turkish invasion to the areas occupied by the Turkish invasion forces and the prohibition by such forces of the movement of such population within the area of the Republic of Cyprus, *properties which consist of movable and immovable property were abandoned,*
>
> And whereas it became essential, for the protection of these properties, to take immediate measures,
>
> . . .
>
> And whereas the regulation by law of the issue of the Turkish-Cypriot properties in the Republic became essential.[65]

Looking at it, it can be ascertained that the law's purpose is to govern immovable and movable properties that were "deserted" in the wake of the massive movement of the Turkish-Cypriot population after the invasion on July 20, 1974, to areas occupied by Turkish troops. It intended to take immediate measures to protect these properties.

Basing its argument on various provisions of the enactment, namely Section 2, the government alleges during all legal proceedings

62. Langan, *supra* note 60, at 7 (citing A-G v. Prince Ernest of Hanover [1957] AC 436 (HL) 467–68).

63. *Id.*

64. *Id.* at 178 (citing Cope v. Doherty (1858) 44 Eng. Rep. 1127; 4 K. & J. 367 at 374(Ch.)).

65. *See* L. 139 of 1991 preamble (emphasis added).

that L.139/1991 applies to all properties of Turkish-Cypriots who do not have their habitual residence in areas controlled by the Republic.[66] As will be evident from case law to be discussed below, this is regardless of when, if ever, the registered owners or their representatives lost physical possession of the given property.

However, the overall tenor of the law, as well as the doctrine of necessity which has been adhered to by the courts of Cyprus since 1964, dictates against such a broad and absolute interpretation. It is submitted that, for numerous other reasons to be cited during the course of this Article, a narrower interpretation on the scope of the law would have been desirable from a legal and practical point of view.

Therefore, an alternative and narrower construction which does not consider the tight proprietary regime of L.139/1991 applicable to immovables that were not physically deserted immediately after July 20, 1974, by the mass movement of the Turkish-Cypriot population should have been preferred. The fact that such an approach would also conform to the object of the Act stated in the preamble can only strengthen this assertion. The preamble and Section 2 ought to have been read together and understood in a way that would allow them to be compatible. Further support for this view can be derived from the Supreme Court judgement where Judge Kronides said:

> The purpose of Law No.139/91, in any event, as specified in the preamble and Section 1, is the administration of [Turkish-Cypriot] properties abandoned by their [Turkish-Cypriot] owners as a consequence of the Turkish invasion and, the forceful move of the population.[67]

As stated earlier in Part I of this Article and as clarified in its preamble, L.139/1991 was intended to operate in circumstances where the need to protect "deserted" Turkish-Cypriot immovables was paramount. Therefore, the lack of any genuine need to protect a given immovable property highlights the absence of a factual or legal justification for considering it covered by L.139/1991.

B. Construction Most Agreeable to Justice and Reason

Before adopting any proposed construction of a passage susceptible of more than one meaning, it is important to think of the effects or consequences which would result from it, for they often point to the intended meaning of the words. "In determining either the general

66. *See* Att'y Gen. v. Bahçecioğlu, (1998) 1 A.A.Δ. 426, 436; Hakki, *ex rel.* Vakf of Barutçuzade Ahmet Vasif Efendi v. Elec. Auth. of Cyprus, (Dec. 11, 2019) Civ. App. No. 320/2012 at ¶ 11 (Sup. Ct. Cyprus).

67. *See* Kitsi, (2001) 1 A.A.D. 1077 at 1088.

object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in *accord* with convenience, reason, justice and legal principles should, in all cases of doubtful significance, be presumed to be the true one."[68] Case law supporting this assertion will be explored below.

"An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available."[69] Where the literal application of words would "defeat the obvious intention of the legislation and produce a wholly unreasonable result[,]" we must "do some violence to the words" in order to achieve that obvious intention and produce a rational construction.[70] In *Gill v. Donald Humberstone & Co.*, Lord Reid said, "if the language is capable of more than one interpretation, we ought discard the more natural meaning if it leads to an unreasonable result, and adopt that interpretation which leads to a reasonably practicable result."[71]

The concept of unreasonableness is often intertwined with that of injustice, although the two can be considered legally distinct terms.[72] In a manner that mirrors the approach concerning the reasonableness of an interpretation, courts have held that whenever the language of the legislature allows for two constructions and one construction would lead to obvious injustice, the courts ought to conclude that such a result could not have been intended, unless that intention had been expressed in plain words.[73]

In light of these principles and case law, holding that L.139/1991 should not apply to properties that were not physically deserted on July 20, 1974, or soon thereafter would have been the only reasonable and just interpretation, yet a contrary view was adopted in the jurisprudence of the Supreme Court of the Republic of Cyprus.[74] Regardless of physical abandonment in or around 1974, the registered owner or representative taking residence in areas outside of government control, alone, would trigger the jurisdiction of the Custodian.

68. Langan, *supra* note 60, at 199.

69. Artemiou v. Procopiou [1966] 1 Q.B. 878 at 888 (Danckwerts L.J.).

70. Luke v. Inland Revenue Comm'rs [1963] A.C. 557 (HL) at 577 (Lord Reid).

71. Gill v. Donald Humberstone & Co., (1963) 1 WLR. 929 (HL) at 933–34.

72. Langan, *supra* note 60*,* at 208.

73. *Id.* at 208 (citing Smith v. Great W. Ry. (1877) 3 App. Cas. 165; Countess of Rothes v. Kirkcaldy Waterworks Comm'rs (1882) 7 App. Cas. 702; Railton v. Wood (1890) 15 App. Cas. 363; Coutts & Co. v. I.R.C. (1953) A.C. 267).

74. *See* Att'y Gen. v. Bahçecioğlu, (1998) 1 A.A.Δ. 426, 436; Hakki, *ex rel.* Vakf of Barutçuzade Ahmet Vasif Efendi v. Elec. Auth. of Cyprus, (Dec. 11, 2019) Civ. App. No. 320/2012 at ¶ 11 (Sup. Ct. Cyprus).

This interpretation was used to dismiss a claim concerning property taken over by the Department of Antiquities in 2007.[75] In a similar fashion, the Administrative Court turned a blind eye to the physical seizure of two buildings immediately after they were vacated by the officers of the Custodian as recently as October 2012, upholding the assertion of the Office of the Attorney-General that the properties should nevertheless be considered within the scope of the Law.[76] The seizures occurred despite protests coming from the potential tenants and the representative of the registered owner, depriving them of the chance to conclude pending lease contract negotiations.[77] The judgement of the administrative court was subsequently upheld on appeal to the Supreme Constitutional Court of Cyprus.[78]

As will be noted below, this is not the only matter where statutory interpretation at the hands of the judiciary yielded an unfortunate outcome.

II. Judicial Review of the Minister's Decisions, Acts, or Omissions Is Rarely Available as an Option

The framework for challenging a decision, an act, or omission of any organ, authority, or person exercising any executive or administrative authority is laid out in Article 146 of the Constitution. Following the amendments it underwent in 2015 and 2022, it enumerates:

> The Supreme Constitutional Court, in a case provided by law, where an appeal is referred before it by the Court of Appeal, shall have jurisdiction, as a law may provide, to determine on such appeal and the Court of Appeal, in any other case, shall have jurisdiction to determine on an appeal made against a decision of an Administrative Court having exclusive jurisdiction to decide in the first instance on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or

75. District Court of Nicosia Action No.9120/12. Judgement delivered on Feb. 24, 2020. The property in question belonged to a Muslim pious foundation and served as the premises of the Embassy of the Arab Republic of Egypt in Cyprus from 1960 until 2004. It remained in the possession of caretakers until the officers of the Custodian forcibly moved in, took it over, and leased it to a public body in around 2007.

76. Hakki *ex rel.* Vakf of Barutçuzade Ahmet Vasif Efendi v. Att'y Gen., (Apr. 27, 2018) Case No. 1/2013 ¶ 6–8 (Admin. Ct.) (Cyprus). In this case, the Custodian took over the buildings as soon as the Cyprus Fulbright Commission terminated its tenancy and moved out in the autumn of 2012. At the time, the trustee of the foundation with the legal right to the property was in negotiation with various interested parties for rent contracts.

77. These findings were conveyed in pleadings that the author prepared for this case, which have not been reported or published.

78. Inci Hakki, *ex rel.* Vakf of Barutçuzade Ahmet Vasif Efendi v. Att'y Gen., (May 27, 2024) Admin. App. No. 74/18 at ¶ 31 (Sup. Const. Ct. Cyprus).

> administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person. Additionally, the Supreme Constitutional Court shall have jurisdiction to determine, in a case provided for by law and as a law may prescribe, on a decision given by the Court of Appeal on an appeal pending before it against a decision of an Administrative Court.
>
> Subject to the provisions of this Article, a law shall provide for the establishment, jurisdiction and powers of an Administrative Court.
>
> Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission.
>
> Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published or in the case of an omission, when it came to the knowledge of the person making the recourse, unless a different time limit for making the recourse against a decision, act or omission is expressly provided by law.[79]

Past case law has established that, for the purposes of judicial review proceedings, it must be shown by an applicant as a prerequisite that the relevant state organ, authority, or person acted in the sphere of *public law*, not private law. The case of *Midland Bank Project Finance Limited v. Republic* confirmed that the criteria for classifying an act as falling in the sphere of public law are the nature of the act or decision, the public interest it intends to promote, and the public interest in general.[80]

For property matters concerning the members of the Turkish community, this mechanism has rarely been invoked successfully, with the administrative courts repeatedly pointing to a need to pursue private civil litigation before the relevant district court.[81] In this respect, Section 6A of L.139/1991 has been invoked as justification for the decline of administrative jurisdiction. The cases to be referred to below will be illustrative of this point. And, as will be demonstrated below, district courts have not proven to provide an effective remedy either.

Nearly all complaints raised in the second half of Part I have been held to be in the sphere of private law, triggering a decline of jurisdiction for judicial review and summary dismissal of cases with cost orders. Cases that address the withholding of permits to authorize land transfers pursuant to sale contracts between the registered owners and

79. Const. Rep. Cyprus, *supra* note 52, at pt. 9, art. 146.

80. Midland Bank Project Fin. Ltd. v. Cyprus, (1989) 3 A.A.D. 2099, 2100 (Cyprus).

81. *See, e.g.,* Zehra Kemal Ahmet a.o. v. Republic of Cyprus through Ministry of Interior as the Custodian of Turkish Cypriot Properties, (2011) 3 A.A.D. 135 (Cyprus)

third parties constitute the bulk of existing legal precedents.[82] Though, at least one case was dismissed even when the Court was faced with claims about the Minister illegally withholding the property in question.[83] Similarly, in Administrative Recourse No. 1/2013, seizure of immovable property through police force or the exercise of office authority 38 years after the cessation of military hostilities was concluded to be an issue not in the domain of public law.[84]

So far, this Article has dealt with procedural matters. In the remaining part of this Article, the focus shifts to primarily substantive matters that continue to cause grievance to those concerned.

III. The Obligations of the Local Courts Under the European Convention on Human Rights and the Absence of an Objective Justification Based on "Necessity"

A. Tendency to Ignore the Past Jurisprudence of the Supreme Court of Cyprus on "Necessity"

Following the bicommunal hostilities that began on December 21, 1963, a series of laws and measures, including Courts of Justice (Miscellaneous Provisions) Law (L.33/1964), were enacted.[85] These were prima facie contrary to the Constitution but were put forward as necessary to prevent the domination of chaos and social disorder.[86] In the *Ibrahim* case referred to above, the legal basis for upholding laws and measures of this character are subject to certain conditions.[87] Justice Josephides summarized these conditions:

> (a) [A]n 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.[88]
>
> As for the dynamics of the doctrine of necessity, *Aloupas v. National Bank* states:
>
> The doctrine of necessity has its own legal dynamics. Like every legislative measure, it must have a legitimate origin and must emanate from the House of Representatives, while its content must be directly

82. *See, e.g.,* Terrain Constr. Ltd. v. Minister of Interior, (Jan. 31, 2011) Case No. 1125/08 (Sup. Ct. Cyprus); Torgut Yashar v. Cyprus, (2004) 4 A.A.D. 744 (Cyprus).

83. *See* Ahmet v. Cyprus, (2011) 3 A.A.D 135.

84. *Hakki*, (Apr. 27, 2018) Case No. 1/2013 ¶ 16.

85. To see a list of cases following the beginning of the bicommunal hostilities, see this series of databases: Cyprus Bar Ass'n, Databases, CyLaw, https://www.cylaw.org/.

86. *See e.g.*, *Ibrahim*, [1964] Cyprus L. Reps. at 264–65 (Cyprus).

87. *Id.*

88. *Id.* at 265.

> related to the emergency it aims to tidy over and be commensurate to it. The rule of law does not abate in an emergency subject to the qualification that necessity creates a valid juridical basis for legal action. *Legislative measures are subject to juridical control. The Judiciary is charged to ensure that the measures taken are a genuine response to a necessity and, further, that they go[] no further than the necessity warrants. Judicial control is a hedge against arbitrary invocation of necessity as a justification for legal measures, as well as a hedge against abuse of necessity by taking measures uncalled for by necessity*. But so long[] as the measures taken are a genuine response to necessity and designed to cope with it, there will be no interference with legislative action. The legislators are the arbiters of the measures necessary to ease the emergency.[89]

In cases not concerning properties belonging to the members of the Turkish community, the local judiciary has generally adopted a strict adherence to the dynamics quoted above. For example, in *Pastellopoulos v. Cyprus*[90] and *Kyriacou v. Cyprus*,[91] arrangements not satisfying the three criteria cited by Justice Josephides were declared to be unconstitutional.

In *Solomonides v. Attorney-General,* the Supreme Court reiterated that L.139/1991 and the subsequent vesting of the Turkish-Cypriot properties in the Custodian were constitutional to the extent that they were necessary measures for the state to cope with the needs that were caused by the Turkish invasion, thereby serving the constitutional order. Thus, the vesting was meant to be judged with reference to necessity, which rendered their introduction inevitable in the interest of social order.[92] The lip service to the principles of necessity and proportionality can be understood from the terms of the Act itself, notably from such provisions as Section 6(h)(ii).[93]

However, in recent case law, the government has not advanced a single fact or allegation to rebut the claimants' assertions that they have the means of enjoying or managing the properties and pursuing their rights through litigation.[94] Additionally, a governmental need to house refugees appears to be generally absent, considering fifty years have passed since the cessation of hostilities. It is hard to explain the rationale for refusing to release property from the custodianship, save

89. Aloupas v. Nat'l Bank of Greece (1983) 1 Cyprus L. Reps. 55, at 78 (Cyprus) (emphasis added).

90. Pastellopoullos v. Cyprus (1985) 2 Cyprus L. Reps. 165, at 178 (Cyprus).

91. Kyriacou v. Cyprus (1987) 3 Cyprus L. Reps. 1130, at 1144 (Cyprus).

92. Antonakis Chr. Solomonides Ltd., (2003) 1 A.A.D. at 1278.

93. *See* Trimikliniotis & Demetriou, *supra* note 19, at 29.

94. *See, e.g.*, Dist.Ct. of Nicosia Action No. 9120/12 (Feb. 24, 2020); *Hakki*, (Apr. 27, 2018) Case No. 1/2013; *Hakki*, (May 27, 2024) Admin. App. No. 74/18.

for the very limited circumstances enumerated in Part I and the ensuing judicial inaction.

Thus, registered owners cannot enjoy any of the rights that should, in the ordinary course of events, be attached to their property. In other words, they cannot enjoy and recover physical possession of their immovable property, rent, let, mortgage, exchange, develop, or alienate the same to any person of their choice at fair market price.[95] At the same time, they cannot receive any remedy or compensation from the government, a public body, or other entity for the previous confiscation or exclusive past physical use of the property for a purpose that does not benefit the owners directly.[96]

It is clear that a policy of inflexible application of L.139/1991 has been in disregard of numerous decisions of the Supreme Court of Cyprus published in the last 60 years and detailed in this Part of the Article.[97] More often than not, the level of limitations on an individual's property rights have not been strictly proportionate to actual public and individual necessity appearing in the facts. This attitude arguably also risks violating Articles 33(2) and 35 of the Constitution of the Republic of Cyprus, which dictate that provisions relating to limitations or restrictions of protected human rights "shall be applied strictly" and that each of the three powers of the Republic, including the courts, is subject to an unabating duty to protect human rights within its domain.[98]

B. L.39/1962

Since its independence in 1960, the Republic of Cyprus has appeared committed to respecting international law and protect human rights. This is evidenced by the fact that it has become a signatory to numerous treaties and incorporated them into domestic law, including the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention).[99] It is submitted that the complaints summarized above have additionally resulted in a disregard of numerous provisions of the Convention incorporated into domestic law by L.39/1962, which, by operation of Article 169(3) of the Constitution

95. *See supra* p. 8.

96. *See supra* p. 8.

97. *See* Const. Rep. Cyprus, *supra* note 52, at pt. 2, arts. 33(2), 35. *See, e.g.*, Aloupas, (1983) 1(A) Cyprus L. Reps. at 78; Pastellopoullos, (1985) 2 Cyprus L. Reps. at 178; Kyriacou, (1987) 3 Cyprus L. Reps. at 1144.

98. *See also* Fakontis v. Cyprus, (1987) 3 Cyprus L. Reps. 557, 562 (Cyprus).

99. Council of Eur., Chart of Signatures and Ratifications of Treaty 005 [Convention for the Protection of Human Rights and Fundamental Freedoms], Treaty Office, https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=005.

of the Republic of Cyprus,[100] has superior force to municipal law.[101] The arguments concerning these will be detailed below. This may risk triggering adverse consequences for the Republic before the European Court of Human Rights (ECHR) and the international community at large.

The author is of the opinion that the current framework and its application in practice violate the Convention and its protocols in five areas, specifically those concerning the right to free movement, respect for home and family life, the right to property, the right of access to court, and the right to be free from discrimination based on residence or race.

1. The Right of Free Movement

This is one of the areas where one can find claims for human rights violations. The substance of Article 13 of the Constitution is, in essence, identical to Article 2, Protocol 4 of the Convention (P4(2)).[102] As such, the past decisions of the ECHR are relevant to assessing whether the present policies violate the Constitution. This could potentially apply to an official insistence on an individual's residence in a government-controlled area on a continuous basis, prior to treating a property as being outside the scope of L.139/1991.

P4(2) provides:

> (1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
> (2) Everyone shall be free to leave any country, including his own.
> (3) No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
> (4) The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.[103]

100. Const. Rep. Cyprus, *supra* note 52, at pt. 12, art. 169(3).

101. L. 39/1962, published in Cyprus Government Gazette No.157, Supplement I, May 24, 1962, 353.

102. *Compare* Const. Rep. Cyprus, *supra* note 52, at pt. 2, art. 13 ("Every person has the right to move freely throughout the territory of the Republic and to reside in any part thereof . . .), *with* Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms art. 2, Oct. 16, 1963, E.T.S. No. 46 ("Everyone lawfully within . . . a State shall, within that territory, have the right to liberty of movement . . .).

103. *See* Protocol No. 4 to the Convention for the Protection of Human Rights and

The ECHR, in *Baumann v. France,*[104] said "that liberty of movement prohibits any measure liable to infringe that right or [liable] to restrict the exercise thereof" unless it can qualify as a measure that "can be considered as 'necessary in a democratic society' [and] in the pursuit of the [state's] legitimate aims."[105] In a later case, the Strasbourg Court concluded:

> Any measure restricting [the rights in Article 2] must be lawful, pursue one of the legitimate aims referred to in the third paragraph . . . and strike a fair balance between the public interest and the individual's rights.[106]

It is hard to see what legitimate public aim can be served in insisting on a claimant's residence on a continuous basis for a considerable time in government-controlled areas. That would be tantamount to restricting their movements in areas north of the U.N.-controlled buffer zone as a condition to acknowledging that their property is not covered by L.139/1991 and its restrictive provisions. Quite often what is at stake is not the legitimate interest of a refugee who, after the horrific events of the summer of 1974, had to abandon their home and their roots in the Turkish-controlled areas, but the political objectives of a government who is also legally obliged to act as the guarantor of the rights of the Turkish-speaking citizens as well. All these can point to nothing other than a violation of a Convention right.

2. Respect for Home and Family Life

It is submitted that a summary rejection of claims is also likely to raise issues under Article 8 to the Convention and the equivalent provisions of the Constitution of the Republic of Cyprus aimed at ensuring respect for home and family life. Article 8 states:

> (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
> (2) There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.[107]

Fundamental Freedoms art. 2, Oct. 16, 1963, E.T.S. No. 46.

104. Baumann v. France, App. No. 33592/96 (May 22, 2001), https://hudoc.echr.coe.int/eng?i=001–59470 [https://perma.cc/X5LU-LE92].

105. *Id.* ¶ 61.

106. Riener v. Bulgaria, 45 Eur. H.R. Rep. 723, ¶ 109 (May 23, 2006).

107. Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms art. 8, Oct. 16, 1963, E.T.S. No. 46.

The notion of personal autonomy is an important principle underlying the interpretation of the guarantees of Article 8. Such personal autonomy includes the right "to conduct one's life in a manner of one's own choosing."[108] In *Niemietz v. Germany,* it was established that "[r]espect for private life must also comprise[,] to a certain degree[,] the right to establish and develop relationships with other human beings."[109]

Imposing a requirement of continuous residence in the south of Cyprus on a claimant before acknowledging that their property is not covered by the law no doubt hinders the claimant's private family life and interpersonal relations with other individuals living in areas not controlled by the Republic. It is hard to contemplate any proper justification for this reasoning. Hence, the current policy may be considered contrary to the Convention.

3. Property Rights Protected Under Article 1 of the First Protocol to the Convention

Article 1 of the First Protocol to the Convention (P1(1)) is as follows:

> 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.[110]

The relationship between the different elements of P1(1) was clarified in *Sporrong and Lonnroth v. Sweden,* where the ECHR set out three rules regarding rights to property:

> The first rule, which is of general nature, enounces the principle of peaceful enjoyment of property; it is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to certain conditions; it appears in the second sentence of the same paragraph. The third rule recogni[z]es that the States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose; it is contained in the second paragraph.[111]

108. Pretty v. United Kingdom, 35 Eur. H.R. Rep. 1, ¶ 62 (2002).

109. Niemietz v. Germany, App. No. 13710/88, 16 Eur. H.R. Rep. (Ser. A) 97, 111 (1992).

110. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, art. 1, Nov. 1, 1998, E.T.S. No. 155.

111. Sporrong & Lonnroth v. Sweden, App. Nos. 7151/75; 7152/75, 5 Eur. H.R. Rep. (Ser.

Rule 1 concerning "interference with [the] enjoyment of possessions"[112] may be applied where a State *denies access* to property. The leading example is *Loizidou v. Turkey*, which addressed claims by a Greek-Cypriot to land which she had owned and possessed prior to the Turkish occupation of Northern Cyprus.[113] Rule 2 on "deprivation of possessions" aims to provide protection against compulsory purchases except when the conditions enumerated therein are satisfied.[114] Nevertheless, as the case of *Papamichalopoulos v. Greece* demonstrates, it may additionally be applied in the context of de facto expropriations.[115] In that case, although the legal title continued to remain with the applicant, he had been unable to use or dispose of the land, and the Greek Navy acted as though it held the rights of an owner throughout the relevant period.[116] This attitude was repeated in *Vasilescu v. Romania*.[117] Similarly, in the context of Section 51(xxxi) of the Australian Constitution of 1901,[118] it was decided that the government's right to enter into possession of privately owned land for an indefinite period was akin to its "acquisition."[119] The third and last rule seems to apply to any kind of control falling short of deprivation of possessions.[120]

In many cases, the actions of the Republic of Cyprus authorities since around July 20, 1974, in respect to the properties belonging to the members of the Turkish community, arguably amount to a de facto expropriation in the sense envisaged by the *Papamichalopoulos* case and come within the scope of Rule 2. As stated, Rule 2 aims to provide protection against compulsory purchases except when the legal conditions are satisfied. Following *Loizidou*, they may also come under the scope of Rule 1, as access to property was arbitrarily denied.

A) 35, ¶ 61 (1982).

112. *Id.* ¶ 53.

113. Loizidou v. Turkey, App. No. 15318/89, 23 Eur. H.R. Rep. 513 (1997). https://hudoc.echr.coe.int/eng?i=001–58007 [https://perma.cc/N93U-V4PM].

114. Douglas S.K. Maxwell, *Disputed Property Rights: Article 1 Property No.1 of the European Convention on Human Rights and the Land Reform (Scotland) Act 2016*, Eur. L. Rev. 900, 912 (2016).

115. Papamichalopoulos v. Greece, App. No. 4556/89, 16 Eur. H.R. Rep. (Ser. A) 440, ¶ 45 (1993).

116. *Id.* ¶ 7–9.

117. Vasilescu v. Romania, App. No. 27053/95, 28 Eur. H.R. Rep. 241, 261 (1998).

118. Though not as legally binding as a judgement delivered by the European courts, those rendered in other common law jurisdictions can be considered "persuasive authority" by the courts in Cyprus. *See* Andreas Neocleous, Neocleous's Introduction to Cyprus Law 137 (3d ed. 2010).

119. Minister of State for the Army v. Dalziel, (1944) 68 Commonwealth Law Reports 261, 276.

120. *See* Marckx v. Belgium, App. No. 6833/74, 2 Eur. H.R. Rep. 330, ¶ 64 (1979).

Determining precisely which of the above rules—alone or in combination—will be relevant to the facts can be a matter of interesting academic debate but will not be crucial to the analysis of this Article. One way or the other, violation of right to property can be considered evident.

As can be ascertained from a string of case law, including *Wiggins v. United Kingdom*,[121] the term "possessions" in P1(1) encompasses all rights and interests that are proprietary in nature. Immovable properties, as is typically the case, are clearly included.

Past case law has settled that no interference, whether under Rule 1, 2, or 3, will be legally acceptable unless the so-called "fair balance" test can be satisfied.[122] This means that an appropriate balance must be struck between the demands of the general community and the conflicting requirements for the protection of fundamental rights.

The trend that can be ascertained from a study of past precedents is that the fair balance test is based on the doctrine of proportionality, which has been incorporated into Cyprus case law following the *Ibrahim* case and the application of the doctrine of necessity.[123] As Lord Brown observed in *R (Countryside Alliance) v. Attorney-General,* in the context of Article 8(2), the phrase "'necessary in a democratic society' clearly does constitute a test of strict necessity."[124] For a prima facie restriction contrary to P1(1) to be upheld, there must be a rational connection between the public policy objective pursued and the means employed by the state to achieve that objective. This has been interpreted such that the means used to impair the Convention right should be no more than is necessary to accomplish that objective.[125] In *R v. Goldstein,* Lord Diplock encapsulated the test in saying, "You must not use a steam hammer to crack a nut."[126]

A public authority will normally fail to show that it has carefully tailored interference where it applies a blanket ban. *Katikaridis v. Greece* stands as authority for the proposition that a system using

121. Wiggins v. United Kingdom, App. No. 7456/76 (Feb. 8, 1978), https://hudoc.echr.coe.int/?i=001–74362 [https://perma.cc/M8S8–3N7X].

122. James v. United Kingdom, App. No. 8793/79, 8 Eur. H. R. Rep. 123, ¶ 50 (1986).

123. *See supra* Subpart III(A).

124. Countryside All. v. A-G [2007] UKHL 52, [2008] 1 AC (HL) 719,[155]-[156] (appeal taken from EWCA (Civ)) (UK) (citing. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, art. 8, Nov. 1, 1998, E.T.S. No. 155).

125. R. v. Sec'y of State for the Home Dep't *ex p. Daly*, [2001] UKHL 27, 2 AC (HL) 532 (Lord Steyn) (appeal taken from EWCA (Civ)) (UK).

126. R. v. Goldstein [1983] 1 WLR (HL) 151 at 155 (appeal taken from EWCA (Crim)) (UK).

irrebuttable presumptions and leaving no chance to challenge it is unduly rigid.[127] In *Hirst v. United Kingdom*, a blanket policy was found disproportionate as it applied to all convicted prisoners irrespective of the length of their sentence, the nature or gravity of their offence, or of their individual circumstances.[128] In view of this, the measure was found to violate the Convention.[129] This stance was repeated in *Open Door Counselling and Dublin Well Woman v. Ireland.*[130] These cases prove that the ECHR takes the observance of proportionality between the public policy objective pursued and the means employed by the state to achieve it very seriously.

The right to exclude others from a person's own land is a core right; consequently, any permanent physical intrusion on land is normally presumed to require compensation, no matter how trivial the actual interference may be.[131] Many public bodies and refugees belonging to the Greek community enjoy the Turkish properties rent-free or with no actual payment directly to the registered owners. In fact, in many recent cases, claimants seeking compensation from defendants who failed to make any payment to them for use of their properties in the period after July 20, 1974, have been summarily dismissed.[132]

The ECHR stated in the *James* and *Lithgow* cases that "compensation terms are material to the assessment [of] whether the contested legislation respects a fair balance between the various interests at stake and, notably, whether it does not impose a disproportionate burden on [an] applicant[]."[133] This principle arguably applies regardless of which rule the relevant interference falls under.

Is the abnormal situation that has occurred in Cyprus since 1974 persistent enough such that the Turkish-Cypriot owners of land in the Republic of Cyprus-controlled areas ought to accept the rigid application of L.139/1991 as detailed above?

One can arguably say that after the Turkish authorities lifted nearly all restrictions at the checkpoints and once relatively free inter-island travel opportunities resumed for the benefit of all Cypriots in April

127. Katikaridis v. Greece, App. No. 19385/92, 32 Eur. H.R. Rep. 6, ¶ 13 (2001).

128. Hirst v. United Kingdom, 42 Eur. H. R. Rep. 41, ¶¶ 41, 83 (2006).

129. *Id.* ¶ 85.

130. Open Door Counselling & Dublin Well Woman v. Ireland, 15 Eur. H.R. Rep. 244, ¶¶ 73–74 (1992).

131. *See* Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982).

132. *See infra* Part V for a discussion of these cases.

133. James, 8 Eur. H. R. Rep. 123, ¶ 54; *see* Lithgow & Others v. United Kingdom, App. Nos. 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81, 9405/81 ¶ 120 (July 8, 1986), https://hudoc.echr.coe.int/eng?i=001–57526 [https://perma.cc/HE3Z-XUUV].

of 2003, most of the justifications evaporated for the Minister of the Interior to step into the shoes of the Turkish-Cypriot owners to look after their properties. The same cannot be said of the Greek-speaking refugees, thousands of whom are still accommodated on Turkish land.[134] Admittedly, it cannot be said that the statutory regime enshrined in L.139/1991 has no meaning whatsoever.

Still, no reason can be advanced to explain why an inflexible application of L.139/1991 to nearly all cases, disregarding the actual facts and circumstances of those cases, would be necessary to achieve the stated policy aim. It is now evident that—unless the few conditions summarized in Part I apply simultaneously—no practical remedy is available to the registered owners. Moreover, only very few of the rights holders can meet the arbitrary conditions listed therein.

Hence, summarily denying a claimant the chance to claim prompt compensation from the government authorities based on an inflexible application of L.139/1991 is a breach of the domestic courts' obligations under L.39/1962, Section 6A of L.139/1991, the Constitution of the Republic of Cyprus, and even the doctrine of necessity itself.

Adopting a rigid view that a given claimant should be based and living in government-controlled areas for L.139/1991 not to apply would be in contradiction of the fair balance test and would force them to bear an excessive individual burden.

4. Denial of Access to Court and More

Section 6(b) of L.139/1991, which lays down that *only* the Minister can bring or defend an action concerning Turkish-Cypriot property,[135] clearly violates a claimant's right of access to court protected under Article 6 to the Convention.[136] Some decisions of the ECHR offer guidance on this.

In *Philis v. Greece*, the applicant engineer's claims for remuneration for work done could only be pursued by the Technical Chamber of Greece pursuant to decree.[137] While allowing the Technical Chamber to pursue these claims might have provided engineers with the benefit of an experienced legal representative for little expense, the ECHR found

134. *See* Trimikliniotis & Demetriou, *supra* note 19, at 37–38.

135. L. 139 of 1991, § 6(b).

136. Convention for the Protection of Human Rights and Fundamental Freedoms art. 6, Feb. 10, 1995, E.T.S. No. 5, 213 U.N.T.S. 211.

137. Philis v. Greece, App. Nos. 12750/87, 13780/88, 14003/88, 13 Eur. H.R. Rep. 741, ¶ 9 (1991).

it insufficient to justify removing the applicant's capacity to pursue and act in their own claim.[138]

Additionally, in *De Geouffre de la Pradelle v. France*, the ECHR held that the right of access had been breached where the applicant did not have "a clear, practical and effective opportunity to challenge an administrative act" which directly interfered with their right to property.[139]

In certain cases, Section 6(b) was applied based on its literal reading. This resulted in a procedural absurdity whereby it was held that *only the Minister* could be the *claimant* in a claim where he was already listed as a *defendant* on the writ of summons, resulting in the claims of the registered owners being struck.[140] This conclusion was upheld by the Supreme Court of Cyprus in Civil Appeal No. 320/12.[141] In this case, there were multiple defendants of private or public background, including the Minister.[142] Yet, objectively speaking, how could one person or entity be expected to have the role of a claimant *and* defendant *at the same time in the same case*? Many unreported cases directed solely against governmental entities were dismissed on other grounds such as allegedly filing the relevant lawsuit prematurely without waiting for the decision of the Custodian on the petition of the registered owner.[143]

In *Attorney General of The Gambia v. Momodou Jobe,* the Privy Council said that the term "property" in Section 18(1) of the Constitution of The Gambia encompassed a debt owed by a banker to their customer.[144] The ECHR and some other international courts have also held that the causes of action against third parties can also enjoy protection under the Convention. *Pressos Compania Naviera SA and Others v. Belgium* stands as authority for the proposition that pending tort claims constitute possessions and their extinctions violate P1(1).[145] In the case of *Kopecký v. Slovakia*, it was clarified and re-confirmed

138. *Id.* ¶ 61; *see also* Holy Monasteries v. Greece, App. Nos. 13092/87, 13984/88, 20 Eur. H.R. Rep. 1 (1994); Canea Catholic Church v. Greece, App. No. 25528/94, 27 Eur. H.R. Rep. 521 (1999).

139. De Geouffre de la Pradelle v. France, App. No. 12964/87 ¶ 34 (Dec. 16, 1992), https://hudoc.echr.coe.int/eng?i=001–57778 [https://perma.cc/WCH8–5FE9].

140. *See* Oğuz Önkaya v. Elec. Auth. of Cyprus, (Mar. 27, 2024) No. 1314/2013 at *3–4 (Paphos Dist. Ct.) (Cyprus).

141. *Hakki*, (Apr. 27, 2018) Case No. 1/2013 ¶ 16.

142. *Id.* ¶ 2.

143. *See infra* Subpart V(B).

144. A-G of Gam. v. Jobe, [1985] L.R.C. (Const) 556 (PC) at 565 (appeal taken from Ct. App. Gam.) (UK).

145. Pressos Compañía Naviera SA and Others v. Belgium, App. No. 17849/91, 21 Eur. H.R. Rep. 301 (1996).

that a cause of action that had vested formally and unconditionally was under the protection of the P1(1).[146] These cases constitute an important extension of the scope of protection for proprietary rights.

The Minister has almost always withheld the exercise of their powers to initiate any kind of proceeding for the benefit of the registered owner of an immovable property and against a person or entity belonging to the Greek community. Despite their practical legal experience on the subject-matter, the author is unaware of such a case reported in the judgments of the Supreme Court of Cyprus. Presumably, this was due to certain political considerations. As a result, substantial sums that accrued in favor of the rightful owner as part of an earlier cause of action vis-à-vis a third party or compensation due following legal or de facto expropriation remains unrecovered. It is submitted that this kind of legal inaction—turning a blind eye to the facts detrimental to the rightful owners—can also raise issues under P1(1) and Article 6 to the Convention.

Being applied in manners detrimental to the claimants, L.139/1991 appears to be benefiting the licensed occupier of the properties at the expense of the registered Turkish-Cypriot owners. Moreover, it appears to serve private interests rather than the general community's interest. This constitutes a breach of Cyprus's positive obligation to protect property against wrongful acts of others, a concept arguably recognized by the ECHR in *Cyprus v. Turkey*.[147]

Furthermore, all the procedural anomalies and hurdles that delay or altogether impede the successful pursuit of court litigation against public bodies or third parties render the property rights of a claimant "precarious and defeasible" in the sense envisaged by *Sporrong and Lonnroth v Sweden*.[148] It also creates a lot of uncertainty about when, if ever, a claimant will be able to pursue litigation in their own right or receive the proceeds of a potential settlement.

It must be noted that in *Poiss v. Austria* and *Erkner and Hofauer v. Austria*, the ECHR repeated the view that prolonged uncertainty as to the final fate of property can lead to a finding of a violation of their right protected by P1(1).[149] Similarly, in *Broniowski v. Poland*, it was confirmed that uncertainty—be it legislative, administrative, or arising

146. Kopecký v. Slovakia, 41 Eur. H.R. Rep. 944 (2005).

147. Cyprus v. Turkey, 35 Eur. H.R. Rep. 731, ¶ 271 (2001).

148. *Sporrong*, 5 Eur. H.R. Rep. at ¶ 60.

149. Poiss v. Austria, App. No. 9816/82, 10 Eur. H.R. Rep. 231, ¶ 70 (1988); Erkner and Hofauer v. Austria, App. No. 9616/81, 9 Eur. H.R. Rep. 464, ¶ 68 (1987).

from the authorities' practices—is relevant in assessing a state's respect for the observance of property rights.[150]

5. Discrimination Based on Residence or Race

By 1970, protection from race discrimination had arguably become an international obligation binding on all states with the status of a peremptory norm.[151]

In the *Belgian Linguistics Case (No. 2)*, the ECHR emphasized that the rights guaranteed under the Convention must be read as though Article 14, concerning freedom from discrimination, formed an integral part of each of the articles, laying down rights and freedoms.[152] Accordingly, Article 14 is violated where:

> (a)The alleged discrimination falls within the ambit of another Convention Article,
> (b)There is a difference in treatment between the claimant and other persons in relevantly similar situations,
> (c) The difference in treatment is on a ground protected (explicitly or otherwise) by Article 14, and
> (d) The difference in treatment is not justifiable.[153]

So far as the issue of justification is concerned, the United States Supreme Court in *Palmore v. Sidoti* decided that race is the paradigm "suspect classification," and when race is used as a factor in allocating public benefits and burdens, the law is subject to the most exacting scrutiny.[154]

The uniform application of a rule based on the presumed characteristics of a group and without any assessment of individual circumstances can lead to a violation of the ban against discrimination. An example from the past precedents found in Canadian Supreme Court reports serves as a useful anecdote.

In *Nova Scotia (Workers' Compensation Board) v. Martin*, the claimant challenged the exclusion of chronic pain as a basis to receive benefits under Nova Scotia's Workers' Compensation Act.[155] The

150. Broniowski v. Poland, 43 Eur. H.R. Rep. 1, ¶ 145 (2006).

151. *See* Barcelona Traction Light & Power Co. (Belgium v. Spain) (Second Phase), 1970 I.C.J. 3, 32 (Feb. 5). *See also* South West Africa (Liberia v. South Africa) (Second Phase), 1966 I.C.J. 6, 286–301 (July 18) (Tanaka, J., dissenting).

152. Belgian Linguistics Case (No. 2), App. Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64, 1 *E*ur. H.R. Rep. 252, "The Law," p. 22 ¶ 4 (1968).

153. UN Committee on Economic, Social and Cultural Rights, General Comment 3: *Article 14 Discrimination in State Benefit Cases: Trends and Forecasts*, ¶ 8 (Oct. 5, 2015).

154. Palmore v. Sidotti, 466 U.S. 429, 432–33 (1984). As a common law jurisdiction, the judgments of U.S. courts can have legal weight as "persuasive authority" before the courts of Cyprus, see Neocleous, *supra* note 50, at 137.

155. Nova Scotia (Workers' Comp. Bd.) v. Martin, [2003] 2 S.C.R. 504 (Can.).

Supreme Court ruled in their favor on the basis that this exclusion did not correspond to the actual needs and circumstances of injured workers suffering from chronic pain, finding that the Act had wrongfully deprived workers of an individual assessment of their needs and circumstances and had subjected them to uniform, limited benefits based on their presumed characteristics as a group.[156]

The ECHR found a violation of Article 14 in conjunction with P1(1) on the grounds of residence in *Darby v. Sweden,* in which national legislation made a distinction between resident and non-resident individuals in terms of exemption from the church tax.[157]

In relation to the present matter, the application of L.139/1991 discriminates against the members of the Turkish community in the exercise of numerous rights safeguarded by Articles 6(1), 8, 2 to the Fourth Protocol, and 1 to the First Protocol of the Convention. This is because the Turkish-Cypriot property owners are subjected to different treatment than the citizens of the Republic belonging to the Greek-Cypriot community because of their ethnic background or residence. This differential treatment has not been supported by any reasonable or objective justification. During all proceedings attended by the author, the defendant authorities almost always invoked "the abnormal political situation in the island caused by the Turkish invasion" as justification for the special measures.[158] Yet, an unproportional and blind referral to the abnormal situation in Cyprus should not justify the current state of handling the Turkish-Cypriot properties.

IV. A Non-Muslim Managing the Properties of Muslim Pious Foundations

As stated previously in Part I, L.139/1991 applies to individual *and* Evcaf property.[159] Evcaf is a legal entity that was established and operated in the island well before the start of the British administration in Cyprus in 1878.[160] Amongst other things, it supervises or manages all Muslim places of worship and public and private trusts established after the Ottoman conquest in 1571 with mostly charitable or religious objectives.[161] For all practical purposes, it may be con-

156. *Id.* ¶ 99.

157. Darby v. Sweden, App. No. 11581/85, 13 Eur. H.R. Rep. 774, ¶¶ 20, 34 (1990).

158. Please note that the quotation in this sentence is from a pleading that has not been published nor reported. It is on file with the author.

159. *See* Karouzis, *supra* note 29.

160. Evcaf Corp., A Brief History of Evkaf, https://evkaf.org/history-of-evkaf [https://perma.cc/P753-F6ZC] (last accessed on Jan. 30, 2026).

161. *Id.*

sidered the Muslim counterpart of the Orthodox Church in Cyprus. It is the author's view that this part of Section 2 referring to Evcaf may have been drafted without a profound understanding of the old laws on Muslim foundations, resulting in the judicial interpretations that followed 1991 deepening certain legal misunderstandings.

Chapter 337 of the Laws of Cyprus (Evcaf and Vakfs Law) was enacted in 1955 by colonial authorities intending to simplify and codify key aspects of the Ottoman-era laws on religious trusts and to provide a framework for the management of the Evcaf Office through a "High Council" that would, in practice, have the role of a board of directors.[162] After 1955, *Mazbuta vakf* and *mulhaka vakf* emerged as the two main types of trusts operating in the Turkish community.[163] The former denotes foundations initially dedicated or entrusted to a public body, holder of any Office, or Evcaf administration.[164] The latter are private trusts which are mostly managed by individuals as determined in the deeds of dedication setting up the trusts.[165] Concerning *mulhaka vakfs,* Evcaf has a mere supervisory role, rubber-stamping or certifying as *mütevelli* (representative or trustee) the individuals satisfying the requirements set out in the original trust instrument to be the holder of such Office.[166] In practice, Evcaf also supervises and approves the annual accounts of such *vakfs* prior to the distributions of net income to the beneficiaries (*gallehar*). Therefore, it would be erroneous to equate the properties belonging to *mulhaka vakfs* with Evcaf property.

Administrative Recourse No. 209/2011 concerned an attempt by an individual claiming to represent a *mulhaka vakf* to get her status as *vakf mütevelli* registered in the records of the local District Lands Office, pursuant to the relevant law.[167] A refusal by the department to act on the request was challenged by way of a judicial review proceeding.[168] The recourse was ultimately dismissed by a single member of the Supreme Court on the primary ground that Evcaf certifying the mütevelliship (in essence, the trustee status) of the applicant was "an illegal

162. *Evcaf and Vakfs Law*, Cap. 337 (1959) (Cyprus) (printed by C.F. Roworth Ltd.), available at CAP337.pdf (cylaw.org) (last visited on Jan. 8, 2024).

163. *See id.* § 2 for definitions.

164. *See id.*

165. *See id.*

166. *See id.*

167. For the relevant law, see *Immovable Property (Tenure, Registration and Valuation) Law*, Cap. 224, § 37 (1959) (Cyprus) (printed by C.F. Roworth Ltd.), available at CAP224.pdf (cylaw.org) (last visited on Jan. 20, 2026).

168. Hakki *ex rel.* Vakf of Barutçuzade Ahmet Vasif Efendi v. Nat'l Land Registry Serv., (Oct. 31, 2012) Case No. 209/2011 ¶ 4 (Sup. Ct. Cyprus).

entity operating in the occupied areas whose acts constituted nullity."[169] Another point was the assessment that the property in question was subject to the custodianship of the Minister who had the sole authority to approve any *mütevelli* appointment. In the absence of any such approval, the management of the *vakf* rested with him as the Custodian. By implication, he alone fulfilled the role of trust representative. In Administrative Appeal No. 249/12, the aforementioned judgment remained undisturbed.[170]

The ECHR judgment in *Chassagnou v. France* can be relevant to assess whether the Minister of the Interior, as opposed to a member of the Turkish community, should be considered the *mütevelli* of a relevant *vakf*.[171] Above all, the decision emanates from a court tasked with interpreting and applying the Convention within a local legal system. This case asserted that the claimants' ethical objections can be relevant in assessing whether a state has violated the Convention.[172]

To the best of the author's knowledge, at all material times since 1991, the Minister has never been a practicing Muslim. A judicial decision that only the Minister can act as the trustee fundamentally contradicts the principles of Ahkâm-ul Evkaf (the Ottoman-era laws on pious foundations[173]) and Chapter 337 and Article 110(2) of the Constitution of the Republic of Cyprus because it is not backed by any necessity on the facts. In other words, there are factually or religiously more appropriate persons who can assume the management of such trust properties.

This also triggered some ethical and political considerations as well as a factual anomaly in the circumstances. For the properties located north of the U.N.-controlled buffer zone, an Evcaf-approved Muslim appointee is considered the trust representative. In relation to the properties of the *same trust* in areas controlled by the Republic of Cyprus, an Orthodox Christian official is appointed to that role. On the other hand, it is hard to agree with a conclusion about Evcaf being tainted by illegality due to its headquarters being located in the Turkish Republic of Northern Cyprus. The Supreme Court of Cyprus has overlooked Evcaf's long history, its recognition at the international level,

169. *Id.* ¶ 16.

170. Hakki *ex rel.* Vakf of Barutçuzade Ahmet Vasif Efendi v. Nat'l Land Registry Serv., (Mar. 5, 2020) Rev. App. No. 249/2012 ¶ 15 (Sup. Ct. Cyprus).

171. Chassagnou v. France, 29 Eur. H.R. Rep. R. 615 (2000).

172. *See id.* ¶¶ 85, 114, 117.

173. *See* Elmalili Muhammed Hamdi Yazir, Introduction to Ottoman Waqf Law: Ahkâm-ı Evkâf (Hamdi Çilingir ed., 2020).

and its legal basis entrenched in pre-independence laws such as Chapter 337 and the Article 110(2) of the Constitution of the Republic.[174]

V. The Amendments Adopted in 2010 Failed to Give the Desired Effects

A. The New Interpretative Obligation Imposed Under the New Section 6A of L.139/1991

The presumption that Parliament does not intend to interfere with fundamental rights and freedoms has a long history in common law jurisprudence. In *R v. Secretary of State for Home Department*, Lord Hoffman, in a passage subsequently quoted by many other judges, said:

> The principle of legality means that Parliament must squarely confront what it is doing and accept the political cost. Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual. In this way the courts of the United Kingdom, though acknowledging the sovereignty of Parliament, apply principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional document.[175]

The presumption has been described by former Australian Chief Justice Anthony Murray Gleeson in the following terms:

> The presumption is not merely a common sense guide to what a Parliament in a liberal democracy is likely to have intended. It is a working hypothesis, the existence of which is known both to the Parliament and the courts, upon which statutory language will be interpreted. The hypothesis is an aspect of the rule of law.[176]

Despite this principle, some judgements delivered by the courts in Cyprus under L.139/1991 have not followed this rule of statutory interpretation embodied in common law. Application number 18163/04 of *Nezire Ahmet Adnan Sofi*, filed against the Republic of Cyprus before the European Court of Human Rights (ECHR) for alleged violation of Articles 8 and 13 of the European Convention on Human Rights (the Convention), and Article 1 of the First Protocol to the Convention

174. *See* CAP 337, *supra* note 162; Const. Rep. Cyprus, *supra* note 52, at pt. 5, art. 110(2).

175. R v. Sec'y of State for the Home Dep't, *ex p.* Simms [2002] 2 AC (HL) 115 at 131 (appeal taken from EWCA (Crim)) (UK).

176. *See* Repatriation Comm'r v Viet. Veterans Ass'n of Austl. NSW Branch Inc., (2000) 24 NSWLR 548,116 (Austl.).

triggered a process in which the Attorney-General of the Republic undertook initiatives to effect certain changes to L.139/1991 to achieve a friendly settlement.[177] These initiatives came to fruition through L.39(1)/2010, which amended some key provisions of the law governing the Turkish-Cypriot properties, possibly as a means for the Republic to save face by avoiding a potential embarrassment before the ECHR.[178]

The most important provision appears to be the new Section 6A. This provision expressly declares that breaches of the Convention by public bodies are actionable.[179] In sub-paragraph three, it lays down that "in determining in an action under sub-section (2) whether the plaintiff's right has been violated, the court shall examine the circumstances of the case and shall take into account the factors, taken into account by the European Court of Human Rights as relevant" to the matter at hand as they arise from its case law on the subject, thereby further imposing an obligation on the courts to heed the principles of the ECHR in settling disputes under the law.[180]

The declaration of the Cyprus government published in the *Sofi* decision dated January 14, 2010, and the subsequent enactment adopted by the House of Representatives can be taken as an acknowledgement at the highest level that, prior to 2010, L.139/1991 was applied and interpreted in a way that ran counter to the obligations of the Republic under the Convention.

Given the importance of the declaration within the *Sofi* judgment, it is worth quoting it verbatim:

> I, Mr[.] Petros Clerides, declare that the Government of Cyprus express their sincere regret for the inconvenience suffered to Mrs[.] Nezire Ahmet Adnan Sofi (hereinafter "the applicant") due to the fact that she was deprived of the use and control of her property for the period of time to which her complaint relates. The Government have [sic] fully satisfied the applicant's claim for vacant possession of both houses with the result that from January 2009 she has been free to exercise freely all her rights as owner of the property, free of occupying tenants. These rights are fully and permanently restored in all respects enabling the applicant's heirs and successors and any person claiming rights through her to exercise their rights over the property

177. Sofi v. Cyprus, App. No.18163/04 (Apr. 21, 2004), https://hudoc.echr.coe.int/fre?i=001–96984 [https://perma.cc/8F7P-NDUZ].

178. Sofi's case about her land has triggered worries amongst the Greeks, *Sofi'nin toprak davası Rumları telaşlandırdı*, KIBRIS POSTASI (Gr.), (Feb. 12, 2009), https://www.kibrispostasi.com/c35-KIBRIS_HABERLERI/n32144-sofinin-toprak-davasi-rumlari-telaslandirdi [https://perma.cc/3CEP-3K3H] (last visited Apr. 23, 2025).

179. L. 139 of 1991, § 6A(1).

180. *Id.* § 6A(3).

> freely and fully. The Attorney-General has undertaken initiatives to effect certain changes to Law no. 139/1991, namely Turkish-Cypriot Properties (Administration and Other Matters) Law 1991. The Government further offer [sic] to pay the applicant 427,150.36 euros (corresponding to 250,000 Cyprus pounds (CYP)) for pecuniary damage for loss of use of her property, 50,000 euros for non-pecuniary damage and 59,801.06 euros (corresponding to CYP 35,000) for costs and expenses. These terms are put forward with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, in which the applicant had principally invoked Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1, as well as Article 14 of the Convention read separately or in conjunction with Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 with regard to the legal impediment placed on her enjoyment of her properties by Law no. 139/1991.
>
> The above sums, which are to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable to the applicant. They will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. From the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.[181]

To the extent that past judgements of the Cypriot courts may have any applicability to new cases, they should be re-interpreted to be compatible with the ECHR principles already discussed in detail concerning the potentially applicable provisions of the Convention. To the extent that this cannot be possible, they should be ignored. As previously stated, this interpretation requirement is an obligation also emanating from the wording of Article 169 of the Constitution.[182] Regrettably, however, none of these approaches have been adopted by the local courts in the past 15 years.

In England, Section 3 of the Human Rights Act 1998 (the HRA) is arguably similar in substance to Section 6A of L.139/1991. A glance at the relevant English precedents and the trend evidenced therein can offer us guidance on the nature of the new interpretative obligation imposed on the courts of Cyprus by the legislature while reaching decisions under L.139/1991. Section 3 of the HRA reads as follows:

181. *Sofi*, App. No. 18163/04 (Apr. 21, 2004).

182. *See supra* Subpart III(B).

> (1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.
> (2) This section—
> a. applies to primary legislation and subordinate legislation whenever enacted;
> b. does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and
> c. does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility[183]

In *Ghaidan v. Godin-Mendoza*, the House of Lords stated that Section 3 necessitated a fresh interpretation of the Rent Act of 1977.[184] This led to reaching a decision completely contradictory to one delivered three years earlier in *Fitzpatrick v Sterling Housing Association,*[185] even though the Rent Act had not undergone any amendment in the meantime.

In the Cyprus judiciary, however, such a bold attitude has remained absent in the past 15 years. The statutory amendments appear to be only cosmetic in nature, with many claims being summarily dismissed and the Custodian's discretion remaining largely unchecked. Nearly all judgments delivered over the past decade make extensive reference to the pre-2010 precedents. The author, who is a practiced member of the Cyprus Bar Association, has not observed or noted a client or claimant receiving a remedy or winning a case except where the narrow window of opportunity elaborated on in Part I is available in the circumstances.

B. The Issue of an Application to the Minister Under Section 6A(2) of L.139/1991 Ought Not to Be Used in a Manner Detrimental to the Claimants

Based on the earlier court submissions of government authorities, it appears that the alleged failure of a claimant to wait for a rejection of their initial application with the Minister prior to initiating proceedings should be one of the grounds for dismissal under Section 6A(2) of L.139/1991.[186] The author respectfully disagrees with this assessment for a number of reasons.

183. Human Rights Act 1998, c. 42 (UK), https://www.legislation.gov.uk/ukpga/1998/42/contents [https://perma.cc/SN92-WWP5].

184. Ghaidan v. Godin-Mendoza, [2004] UKHL 30, [2004]3 WLR (HL) 113, ¶ 23 (appeal taken from EWCA (Civ)) (UK).

185. Fitzpatrick v. Sterling Hous. Ass'n. Ltd., [2001] 1 AC (HL) 27 (UK).

186. *See* L. 139 of 1991, § 6A(2). The relevant sub-section reads as follows:

> A person alleging violation of any right guaranteed by the above mentioned

In relation to an application to the Minister of Interior, the intended consequence of the failure to make the application is not stated in the legislation. It is a principle of statutory interpretation that, where a requirement is held to be merely directory or—perhaps more appropriately put—mere guidance, the failure to comply with the requirement does not invalidate the thing done under the enactment, and the law will be applied as closely as possible, as if all requirements were met.[187] Any reference in the statute regarding an application to the Minister of Interior should merely be considered a directory requirement or in the nature of mere guidance to the petitioners. The law does not state in explicit terms that no case can be filed or proceed in the absence of a definite rejection of a petition by the Custodian. As such, it does not qualify as a condition precedent to filing an action in a district court.

Support for this view may be derived from the case of Re *Saunders*, in which Judge Lindsay held that the apparent prohibition in the Insolvency Act of 1986—stating that no creditor shall before discharging the bankrupt, commence any legal proceedings against the bankrupt except with the court's permission—was to be construed as directory only.[188]

In the case of court litigation, any breach of a potential procedural requirement may be compensated in the measure of legal costs to be awarded at the outcome of the relevant process.[189] Thus, the rights of all parties concerned can be properly and adequately protected at a stage where the court has discretion. Hence, the courts are more willing to hold that a statutory requirement is merely directory if any breach of the requirement is necessarily followed by an opportunity to exercise some judicial or official discretion in a way which can adequately compensate for a breach.[190]

Therefore, the principle of fairness is violated when the authorities of the Republic of Cyprus hide behind an alleged procedural infringement to avoid offering a remedy and just satisfaction. The duty of the courts ought to be to terminate the violation of human rights and not to

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> Convention or/and its Protocols, as a result of the implementation of a provision of this Law in his case, is entitled, if a relevant application made by him is rejected by the Minister, to have recourse to the district court by way of action brought against the Republic and the Custodian for the alleged violation and to claim for the violation the remedies provided for in this section . . . .

187. *See Re* Saunders (A Bankrupt), [1997] 3 All ER (HL) 992 (UK); Francis A.R. Bennion, Bennion on Statutory Interpretation 55 (5th ed. 2008).

188. Re *Saunders*, [1997] 3 All ER (HL) 992 (UK).

189. *See* Bennion, *supra* note 187, at 55.

190. *Id.*

assist the entities aiming to prolong them. The consequences of striking out a lawsuit altogether would clearly be out of proportion to the alleged procedural lapse of a claimant who failed to wait for the official written response of the Minister. Further, the government should be estopped from raising an objection in this manner, as the failure of the Minister to reply to a petition within the 30-day limit set by Article 29 of the Constitution of the Republic of Cyprus is in violation of the applicable framework and should be taken as a rejection of a claimant's given application.[191]

In practice, claimants often comply with the requirement of filing an application with the Minister; nevertheless, these petitions mostly remain unanswered until a lawsuit is filed and its proceedings reach an advanced stage. While, for reasons stated in Part II, the judicial review option for the decisions, acts, or omissions of the Custodian remains practically unavailable, a civil lawsuit concerning a claim linked to an unanswered petition can also be summarily dismissed following a strike out application by a defendant entity based on the aforementioned Section 6A(2).[192] This serves no purpose other than attempting to close the alternative "private law" venue theoretically open to the Turkish-speaking owners.[193] This situation can serve to justify the assertions about denial of access to courts discussed in Part III. Attempts to challenge or close what some may call a legal loophole have also failed. In Administrative Recourse No. 59/2013, a judicial review of a failure to reply to the petition did not succeed, and the recourse was dismissed for "concerning a matter in the field of private law and not public law as ought to have been the case."[194]

As a consequence of this precedent, neither the legal obligation of the Minister to answer a petition intended to precede a legal action nor his timing is subject to any judicial supervision. Since there is no

191. Const. Rep. Cyprus, *supra* note 52, at pt. 2, art. 29.

192. *See* Önkaya, (Mar. 27, 2014) No. 1314/2013 at *3–4 (Paphos Dist. Ct.) (Cyprus); Hakki, (Dec. 11, 2019) Civ. App. No. 320/12 (Sup. Ct. Cyprus).

193. In Cyprus, there are two potential routes available to any litigant in the pursuit of their claims against the government: (i) initiating judicial review proceedings if the subject-matter can be considered within the domain of public law, given the public interest at stake, or (ii) filing a civil action before a lower court (district court) where a defendant resides or where an immovable property is located. The procedure detailed under Section 6A permits resort to the latter option with the presumed assumption that matters covered by L.139/1991 do not come within the scope of public law and, thus, are not subject to judicial review. *See* Polyvios G. Polyviou, Judicial Review and Constitutional Adjudication in Cyprus and Beyond, 353 (2023).

194. Inci Hakki, adm'x of the Barutçuzade Ahmet Vasif Efendi Vakf v. Cyprus, (Feb. 24, 2016) Admin. Recourse No. 59/2013 (Sup. Ct. Cyprus), https://cylaw.org/cgi-bin/open.pl?file=/apofaseis/aad/meros_4/2016/4–201602–59–2013_4.htm [https://perma.cc/ZTL4-PWBH].

judicial supervision over the issue, the Custodian can choose to respond at will or can delay answering a petition before him arbitrarily and indefinitely, leaving the would-be litigant vulnerable to their case being struck by way of a preliminary objection emanating from the Custodian or any other defendant during the process. In some claims, the government not only failed to respond within the period set by the Cyprus Constitution but relied on the Minister's unresponsiveness to procure the dismissal of the case against it.

The author hopes that the preceding information has made clear to the reader why and how an effective remedy, judicial or otherwise, has remained elusive in most cases, outside of those cited in Part I.

Conclusion

The military operation carried out by Turkey in Cyprus on July 20, 1974, and the subsequent proclamation of the Turkish Republic of Northern Cyprus on November 15, 1983, in areas located north of the U.N.-controlled buffer zone, have generally been perceived by the international community as being contrary to international law. Further, the subsequent forcible removal of up to 160,000 Greek-Cypriots from their homes and the denial of access to their land over the past 50 years is shameful. Nevertheless, there are many Turkish-Cypriots who apply to the courts of the Republic of Cyprus with clean hands, seeking justice.

The denial of any remedy to the claimants, given the absence of any legal and factual justification, risks being perceived by the international community as a retaliation for the acts or omissions of the Turkish authorities in respect to Greek-Cypriot immovables. In this respect, one can cite *Apostolidi v. Turkey*[195] as a useful authority. There, the annulment of an inheritance in Turkey of Greek applicants due to the purported lack of reciprocity of inheritance rights for Turkish citizens in Greece was found to be a legal violation due to its lack of a proper basis in law.[196]

The current property regime also risks leaving the Republic in a very difficult position vis-à-vis the European Court of Human Rights (ECHR).

It is worth noting that the Republic has not made use of the powers granted to it under Article 15 of the European Convention on Human Rights (the Convention) that would enable a signatory party to derogate

195. Apostolidi v. Turkey, App. No. 45628/99 (Mar. 27, 2007), https://hudoc.echr.coe.int/eng?i=001–79899 [https://perma.cc/3DM7-FLKA].

196. *See id.* ¶ 78.

from its obligations under it in time of war or another public emergency. To date, as far as the author is aware, the Republic has not notified the Secretary General of the Council of Europe as to the nature or reason for practical derogations in relation to most Turkish-Cypriot immovable property or the measures being taken in respect to them. The non-observance of this formality, without more, is sufficient for a finding of a violation under Article 1 of the First Protocol of the Convention for nearly all Turkish-Cypriot applications concerning restrictions of property rights, which may be found admissible by the ECHR.[197]

So far, with very few exceptions, the courts of the Republic have failed to act in a way that respects the fundamental rights and freedoms of Turkish-Cypriot citizens. In particular, the Republic of Cyprus's courts have failed to attach priority to the courts' obligations under L.39/1962 and the Constitution of the Republic of Cyprus, which both ought to have superior legal force. The Courts failed to disregard and strike down or ignore the sections of L.139/1991 that conflict with those of L.39/1962 and the Constitution. Despite some legislative amendments adopted in 2010, they did not move beyond the case law delivered before then.

The author would like to conclude by quoting some paragraphs of the ECHR judgment delivered in the case of *Niazi Kazali and Hakan Kazali v. Cyprus*. This language may be relevant to bear in mind while assessing the manner in which the local courts in Cyprus have heeded the recommendations of the international court:

> The applicants referred to the case-law of the courts, particularly of the Supreme Court in the context of cases lodged pursuant to Article 146, which had found Law 139/1991 to be justified on the ground of the law of necessity. They pointed out that some judgments post-dated the entry into force of the amended Law and were indicative that the approach of the courts had not changed since the amendments had been enacted. They therefore considered that the courts had already established in the domestic context that no violation of the Convention arose as a result of Law 139/1991.
>
> The Court acknowledges that the case-law of the Cypriot courts cited by the parties which pre-dated the entry into force of the amended Law indicated, for the most part, a resistance to the argument that the provisions of Law 139/1991 violated the Convention, and in particular Article 1 of Protocol No. 1. It would seem that the few judgments provided to the Court which post-date the amended Law have followed this restrictive approach. However, there appears to be no

197. *See* Sakik v. Turkey, 26 Eur. Ct. H.R. 662 at para.39 of the judgement (1998); Abdülsamet Yaman v. Turkey, App. No. 32446/96 (Feb. 11, 2004), https://hudoc.echr.coe.int/eng?i=001–67228 [https://perma.cc/6CBM-65XM].

> reference in the judgments to section 6A of Law 139/1991, and as a consequence the Court considers that it is not clear how the courts will approach their task of interpreting the provisions of the amended Law. The Court notes that in the event of an unsuccessful decision in the District Court, an appeal will be possible to the Supreme Court. In this connection, the Court observes that in the case of *Ahmet*, in which judgment was handed down by the Supreme Court on appeal in February 2011, the Supreme Court was not asked to assess the compliance of the acts of the Custodian or the provisions of Law 139/1991 with the Convention, and the case was ultimately dismissed on grounds of a lack of jurisdiction. It therefore cannot be considered to provide any elucidation of what will be the Supreme Court's approach to these questions.
>
> In conclusion, the Court is satisfied that in examining cases brought under the amended Law the Cypriot courts will have due regard to this Court's case-law concerning, in particular, Article 8 and Article 1 of Protocol No. 1 and that in handing down judgments they will examine the matter afresh, setting out in full their reasoning and explaining clearly whether and how the restrictions imposed on Turkish-Cypriots' property are justified under those Articles.[198]

It appears that these recommendations were not heeded. This is evident from all the limitations, restrictions, and procedural hurdles still facing the registered owners of Turkish-Cypriot properties in areas controlled by the Republic of Cyprus.[199] It is typically the case that a claim can be successfully settled only where: (i) the Turkish-Cypriot owner or their heirs or successors in title do not occupy property belonging to a Greek-Cypriot in the north; (ii) the applicant has left Cyprus and been domiciled overseas since July 20, 1974; and (iii) the Greek-Cypriot refugee, if any, who has been assigned the possession of the property in question by the Minister at an earlier time can be relocated elsewhere within a reasonable period and without much difficulty or financial burden to themselves, their immediate family, and the government.[200] This outcome is too little too late. It falls far short of the reasonable expectations from a member state of the European Union in the 21st century.

At the time of writing, some of the matters where all available local remedies have been exhausted after many years of legal struggle have started reaching the ECHR level through fresh applications. In the

198. Kazali v. Cyprus, App. Nos. 49247/08, 49307/08, 30792/05, 1760/05, 4080/06, 34776/06, 1545/07, 38902/05, 3240/05 (Mar. 6, 2012), https://hudoc.echr.coe.int/eng?i=001–109812 [https://perma.cc/XBU5–7E73]. (Author's note: References to certain paragraphs not forming part of this quote have been removed.)

199. *See supra* Introduction.

200. *See supra* Part I.

past few decades, the same Court demonstrated significant sensitivity and heavy-handedness towards Turkey while examining the complaints of Greek-Cypriots concerning their land in the Turkish-controlled areas of the island and found violations; however, its attitude towards the Republic of Cyprus in view of all the developments since 2010 is yet to be observed and tested.

As of early 2026, the discussions for the legislative overhaul were still underway with new allegations of improper conduct or abuse of the system arising. An article published in the local press quoted allegations of allowing homes intended for refugees to be repurposed as holiday residences and marketed or sublet at excessive rates.[201] The same piece also referred to non-refugee farmers cultivating thousands of acres of Turkish Cypriot land while receiving subsidies from certain public entities.[202] It concluded with an assertion that ''the management of Turkish Cypriot property proves a lamentable catalogue of state failure." What the future will bring remains to be seen.

201. James Morphakis, *How will half a century of state squander of Turkish Cypriot property be rectified? The labyrinthine mess of Turkish Cypriot properties*, Cyprus Mail (Feb. 22, 2026), https://cyprus-mail.com/2026/02/22/the-labyrinthine-chaos-of-turkish-cypriot-properties.

202. *See id.*