British Institute of International and Comparative Law

# HUMAN RIGHTS, THE CYPRUS PROBLEM AND THE IMMOVABLE PROPERTY COMMISSION

MELIZ ERDEM* AND STEVEN GREER**

**Abstract** This article critically examines the role of the Immovable Property Commission, established in 2005 by the 'Turkish Republic of Northern Cyprus' under pressure from the European Court of Human Rights, to redress losses sustained by Greek Cypriots who fled south when the island was partitioned in the mid-1970s. While the Commission has been a modest success, proceedings have been lengthy, its decisions lack transparency, there have been difficulties with restitution and exchange, and the payment of compensation has often been delayed. Corporate ownership and encumbrances, such as mortgages, have also proved problematic. But, whether it contributes negatively or positively to full resolution of the Cyprus problem, or makes no contribution at all, remains to be seen.

**Keywords**: Human Rights, Cyprus problem, *Demopoulos and others v Turkey*, European Convention on Human Rights, European Court of Human Rights, Immovable Property Commission, restitution.

## I. INTRODUCTION

The island of Cyprus, partitioned following the intercommunal strife and Turkish military intervention of the mid-1970s, presents one of the world's most enduring and largely ignored conflicts. Active armed hostilities have long since ceased and in recent years there have been signs of possible resolution. Hopes were, for example, raised when, on 31 March 2004, the Annan Plan—a UN-sponsored attempt to create a single federated republic—was finalized. But these were dashed when, in referendums held on both parts of the island on 24 April 2004, only 24 per cent of Greek Cypriots, on a turnout of 89 per cent, voted in favour, compared with 65 per cent of Turkish Cypriots, on a turnout of 87 per cent. In July 2017, a fresh, UN-initiated, round of negotiations also ended without agreement.[1]

Developments have, nevertheless, occurred in the shadow of the stalemate. One concerns the Immovable Property Commission (IPC), created under pressure from the European Court of Human Rights (ECtHR) in 2005 by the 'Turkish Republic of Northern Cyprus' (TRNC) to compensate Greek Cypriots for both moveable and

* PhD Candidate, School of Law, University of Bristol, me13467@bristol.ac.uk.
** Professor of Human Rights, School of Law, University of Bristol, steven.greer@bristol.ac.uk.

[1] 'Cyprus Talks End without Agreement, Says UN Chief' *The Guardian* (7 July 2017) <https://guardian.ng/news/cyprus-talks-end-without-agreement-says-un-chief/>.

[*ICLQ* vol 67, July 2018 pp 721–732] doi:10.1017/S002058931800009X

https://doi.org/10.1017/S002058931800009X Published online by Cambridge University Press

immovable property abandoned in the north when they fled south in the mid-1970s. In this article we seek critically to appraise this distinctive legal attempt to address a long-standing systemic human rights problem affecting thousands. But before considering how the IPC operates, and evaluating its performance, we begin by briefly describing how and why it was established.

## II. BACKGROUND

The two principal background elements concern the 'Cyprus problem' and the contribution made by the ECtHR to resolving the challenge presented by abandoned Greek Cypriot property in the north.

### *A. The Cyprus Problem*

Since ancient times Cyprus has been governed by a succession of rulers including the Assyrians, Egyptians, Persians, Romans, Greeks, Knights Templar, Venetians, Turks and British.[2] It became part of the Ottoman Empire in 1571 and in 1878, as part of a developing common Anglo-French-Ottoman front against Russian expansion, Turkey agreed that it should be occupied and administered by the UK.[3] By the early twentieth century, encouraged by the continued haemorrhaging of Ottoman power, Greek Cypriots, the majority community, aspired to unite the island with Greece (*enosis*), mirrored by the competing Turkish Cypriot goal of union with Turkey (*taksim*).[4] Post-Second World War decolonization of the British Empire therefore raised awkward questions about the status and form an independent Cyprus should take. In 1955, advocating *enosis*, the Greek Cypriot organization EOKA embarked on a guerrilla war of independence, opposed by Turkish Cypriots and harshly resisted by British forces.[5] A vicious cycle of anti-colonial and inter-communal violence erupted with relative peace restored by the onset of negotiations in 1968.[6] However, a military coup in 1974, instigated by Greek officers of the National Guard, precipitated further violence. The Turkish army intervened and the island, including the capital Nicosia, was partitioned into northern and southern zones.[7] Abandoning their property in the north, around 30 per cent of Greek Cypriots fled south while 40 per cent of Turkish Cypriots moved in the opposite direction.[8] In 1983 the northern zone declared itself the 'Turkish Republic of Northern Cyprus', which is recognized as a State only by Turkey and regarded by the rest of the world as an illegally occupied part of the independent Republic of Cyprus.[9]

Today almost 80 per cent of the island's population of just under 1.5 million live in the Greek south, which accounts for 63 per cent of the territory, while just over 20 per cent

[2] Z Necatigil, *The Cyprus Question and the Turkish Position in International Law* (2nd edn, Oxford University Press 1989) 1–2.

[3] See K Chrysostomides, *The Republic of Cyprus: A Study in International Law* (Martinus Nijhoff Publishers 2000) 20.

[4] N Kızılyürek and T Erhürman, *Kıbrıs'ta Federalizm: Öznesini Arayan Siyaset* [Federalism in Cyprus: Politics in Search of Its Subject] (Işık Kitabevi 2009) 61–6.

[5] Necatigil (n 2) 6–7.

[6] A Gürel, M Hatay and C Yakinthou, 'Displacement in Cyprus: Consequences of Civil and Military Strife Report 5' (Prio Cyprus Centre 2012) 5, 8.

[7] Necatigil (n 2) 79–80.

[8] See D Ş Sert, 'Cyprus: Peace, Return and Property' (2010) 23(2) JRS 238, 239–40.

[9] See UN Security Council Res 541 (18 November 1983) UN Doc S/Res/541.

https://doi.org/10.1017/S002058931800009X Published online by Cambridge University Press

(313,600) live in the Turkish north.[10] Although there is some dispute about the figures, it is also estimated that Greek Cypriots abandoned 1,463,382 *donums* (1 *donum* = 1,338 square metres) of property in the north, and that Turkish Cypriots left 413,177 in the south.[11] Many of the approximately 142,000 Greek Cypriots who became displaced in the south were temporarily settled by the Republic of Cyprus in property vacated by Turkish Cypriots, or in houses purpose-built on Turkish Cypriot land, while many of the approximately 55,000 displaced Turkish Cypriots were settled in Greek Cypriot property by the authorities in the north.[12] In August 1975 the leaders of the two parts of the island reached the Vienna Agreement III,[13] interpreted by Turkish Cypriots as recognition of partition (the so-called principle of 'bizonality') and population exchange. This enabled members of each community who found themselves part of the minority on either side of the border to move to the other side if they so wished. By September 1975 only 130 Turkish Cypriots were left in the south and, although the number of Greek Cypriots in the north decreased more gradually, by 2017 only 333 remained there.[14]

In 1977, in an attempt to regularize the occupancy of abandoned Greek Cypriot property in the north, the Turkish Cypriot authorities passed the first of a series of laws to allow transfer of title based on the surrender of abandoned land of equivalent value in the south.[15] Comparable Greek Cypriot policy has, however, been significantly different. Under the 1991 Guardian Law, while Turkish Cypriots retain legal title to their southern property, the Republic of Cyprus assumes guardianship. Although the land can then be leased to displaced persons or used for other public purposes, sale, exchange or transfer is prohibited without the Guardian's consent. The principal conditions for the original owners to claim and to exercise other rights over their abandoned properties is to prove they live permanently abroad or have settled in the Greek sector for a minimum of six months.[16]

### *B. The European Court of Human Rights and Abandoned Greek Property in Northern Cyprus*

In the wake of partition numerous cases, raising a variety of complaints, have come before the European Commission of Human Rights and the ECtHR in Strasbourg.[17] However, we are concerned here only with those relating to abandoned Greek property in the north. In the first of these, *Loizidou v Turkey*,[18] the applicant

[10] See 'Cyprus: Bridging the Property Divide' (International Crisis Group Europe Report No 210 (9 December 2010) 1.

[11] See A Gürel and K Özersay, 'The Politics of Property in Cyprus, Conflicting Appeals to "Bizonality" and "Human Rights" by the Two Cypriot Communities' (2006) 3 Prio Centre Report 3, 8–9.

[12] R Bryant and M Hatay, 'Suing for Sovereignty: Property, Territory and the EU's Cyprus Problem' Policy Brief (Global Political Trends Center 2009) 4.

[13] Gürel and Özersay (n 11) 16–18.

[14] A Dayıoğlu, 'Minority Rights in North Cyprus' (2012) 1 Turkish Cypriot Human Rights Foundation Publications 28; United Nations Security Council, 'Report of the Secretary-General on the United Nations Operation in Cyprus' (10 July 2017) S/2017/586 para 26.

[15] Sert (n 8) 247.

[16] ibid 249.

[17] See *Cyprus v Turkey* Appl Nos 6780/74, 6950/75 Commission Report (10 July 1976); *Cyprus v Turkey* Appl No 8007/77 Commission Report (4 October 1983).

[18] *Loizidou v Turkey* Appl No 15318/89 Merits (18 December 1996).

https://doi.org/10.1017/S002058931800009X Published online by Cambridge University Press

complained of having been prevented by Turkish forces from returning to her abandoned property in Kyrenia on the north coast.[19] The majority of the ECtHR held that, since this had led to her completely losing control of it, Article 1 of Protocol No 1 ECHR (the right to peaceful enjoyment of possessions) had been breached. However, since Mrs Loizidou had never occupied the land as her 'home', it was held that there had been no violation of Article 8 ECHR (the right to respect for private and family life, home and correspondence).

The *Loizidou* judgment opened the door to many similar claims.[20] In *Xenides-Arestis v Turkey*[21] the respondent government claimed that since the applicant, who was in a similar position to Mrs Loizidou, had not applied to the Immovable Property Determination, Evaluation and Compensation Commission (IPDECC)—established in northern Cyprus on 30 July 2003 in response to the *Loizidou* case—there had been a failure 'to exhaust domestic remedies' as required by Article 35(1) ECHR. Rejecting this claim, upholding the complaint, but remitting its final decision on just satisfaction, the ECtHR concluded that the IPDECC could not be considered an effective remedy until difficulties regarding the status of its members, issues relating to Articles 8 and 14 (the prohibition of discrimination) ECHR, and the provision of compensation for non-pecuniary losses, and for movable as well as immovable property, were resolved. It was also held that 'the respondent State must introduce a remedy which secures genuinely effective redress for the Convention violations identified in relation to the present applicant as well as with respect to all similar applications pending before it'.[22]

As a result, the TRNC enacted a new compensation statute—No 67/2005, the 'IPC law'—replacing the IPDECC with the IPC, at least two of the seven members of which must be non-Cypriot and nationals of States other than the UK, Greece, or Turkey.[23] The legislation, which came into force on 22 December 2005, states that its purpose is:

> to regulate the necessary procedure and conditions to be complied with by persons in order to prove their rights regarding claims in respect to movable and immovable properties within the scope of this Law, as well as, the principles relating to restitution, exchange of properties and compensation payable in respect thereof, having regard to the principle of and the provisions regarding protection of bizonality … without prejudice to any property rights or the right to use property under the Turkish Republic of Northern Cyprus legislation or to any right of the Turkish Cypriot People which shall be provided by the comprehensive settlement of the Cyprus Problem.[24]

In its judgment on the merits of *Xenides-Arestis v Turkey*, the ECtHR accepted that, in principle, these new arrangements met Convention requirements. As a result, €800,000 were awarded for the applicant's pecuniary, and €50,000 for non-pecuniary, loss.[25] By November 2009, 433 cases had been lodged with the IPC, 85 of which had been concluded mostly by friendly settlement. In four, the IPC ordered restitution and compensation, in two exchange, and in one the applicant decided to defer restitution

[19] paras 11–12, 26.
[20] R White, 'Tackling Political Disputes through Individual Applications' (1998) EHRLR 61, 71.
[21] *Xenides-Arestis v Turkey* Appl No 46347/99 Merits (22 December 2005); *Xenides-Arestis v Turkey* Appl No 46347/99 Just Satisfaction (7 December 2006).
[22] ibid para 40.
[23] Art11(1).
[24] Art 3.
[25] *Xenides-Arestis v Turkey* (Just Satisfaction) (n 21) paras 36–39.

https://doi.org/10.1017/S002058931800009X Published online by Cambridge University Press

until the Cyprus problem itself was solved. Compensation was awarded in more than 70 cases, involving some 361,493 square metres of property, and approximately €47 million were paid in damages.[26]

The case of *Demopoulos and others*,[27] lodged with the ECtHR between 1999 and 2004 before Law No 67/2005 was passed, provided a further opportunity for the Convention-compliance of the new arrangements to be considered at Strasbourg. The ECtHR concluded that the limited provision for restitution in the IPC law was not fatal to its effectiveness as a remedy because changes in occupation and usage of abandoned properties since partition had rendered this problematic, though without depriving the original owners of title.[28] If, as in such circumstances, the nature of the violation did not allow for restitution, compensation could, therefore, be permitted as an alternative.[29] It was also held that although an exchange of property provided another form of redress, its impact upon those in current occupation should not create disproportionate new wrongs. Rejecting the applicants' arguments regarding the 'accessibility and efficiency' of the mechanism and their claims that the IPC was not sufficiently independent and impartial, the ECtHR concluded that Law No 67/2005 'makes realistic provision for redress in the current situation of occupation that is beyond this Court's competence to resolve' and that prospective applicants could choose to 'await a political solution' to the Cyprus problem instead of applying to the IPC.[30]

## III. THE IMMOVABLE PROPERTY COMMISSION

The following sections consider the IPC's procedure, how it operates, and the central challenges it faces.

### *A. Procedure*

Article 159(1)(b) of the Constitution of the TRNC determines the scope of Law No 67/2005 as follows:

> (b) All immovable properties, buildings and installations which were found abandoned on 13 February 1975 when the Turkish Federated State of Cyprus was proclaimed or which were considered by law as abandoned or ownerless after the above-mentioned date, or which should have been in the possession or control of the public even though their ownership had not yet been determined … shall be the property of the TRNC … .[31]

The Law also provides, subject to the payment of a fee of 100 Turkish Lira for each application, that all natural and legal persons claiming rights over immovable or movable properties within the IPC's jurisdiction may bring claims against the Ministry of the Interior requesting compensation, restitution or exchange. The legal deadline, which can be extended, is currently 21 December 2019.

[26] *Demopoulos and others v Turkey* Appl Nos 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04 Admissibility (1 March 2010) para 40. [27] ibid.
[28] ibid para 111. [29] ibid paras 114–115 [30] ibid para 128.
[31] The Turkish Federated State of Cyprus lasted until the Turkish Republic of Northern Cyprus was proclaimed on 15 November 1983.

https://doi.org/10.1017/S002058931800009X Published online by Cambridge University Press

Applicants may apply in Turkish in person, by a representative or through a lawyer[32] upon the sample form attached to the Rules, also available on the IPC website.[33] The Ministry of the Interior and/or Attorney General of the TRNC must be nominated as the respondent party or parties.[34] Documents, including originals or duly approved copies of title deeds and identity cards or passports, may be submitted in Greek or English at any stage of the process for translation into Turkish by IPC translators, while those submitted by the defendant in Turkish are also translated into Greek or English. Claims over the same property—including mortgages, court orders or other charges registered on or before 1974—must be discharged before the application can proceed. For movable property, applicants must either submit the originals, or duly approved copies of documents, such as receipt, cheque, bank transfer, exchange transfers, proving ownership before 13 February 1975, or that the property in question was hitherto acquired by way of inheritance or gift.[35] Considering the manner and circumstances in which property in the north was abandoned, and the long passage of time since, this presents a considerable challenge.

The Ministry of the Interior is also required to prepare a friendly settlement agreement and to invite the applicant to visit the IPC in order to sign it. If this results in compensation being accepted, all the applicant's rights over their property are relinquished and title is transferred to the TRNC. In the absence of friendly settlement, the IPC can examine applications, collect written and oral testimony, hear witnesses, summon any person residing in the TRNC to give testimony and/or to produce any document, compel anyone to give evidence, and award expenses to any persons summoned.[36] It is an offence to refuse to produce any documents or information required by the IPC, and to fail, without legal excuse, to appear or decline to give evidence. Monetary fines may be imposed upon conviction.[37] The standard of proof the applicant must meet is 'beyond reasonable doubt'. After hearing the arguments of the parties, examining the documents submitted, and having taken relevant considerations into account, the IPC decides whether to order restitution, to offer exchange, or to pay compensation including the amount and method of payment. In addition to these remedies the applicant may also claim compensation for loss of use and/or for non-pecuniary damage.[38] IPC decisions have binding effect, are executory, are required to be implemented without delay upon being served on the authorities concerned,[39] and can be appealed to the High Administrative Court of the TRNC.

### *B. Operation*

As of 29 December 2017, 6,392 applications had been lodged with the IPC, 873 of which were settled by the award of compensation, 850 by friendly settlement at the preliminary hearing stage and 23 by adjudication on the merits. Exchange and compensation was awarded in two cases, restitution in three, restitution and compensation in six, restitution after the settlement of Cyprus problem in one, and partial restitution in one

[32] Rule 3(2); 'Rules Made Under Sections 8(2)(a) and 22 of the Law for the Compensation, Exchange and Restitution of Immovable Properties which are within the Scope of Sub-paragraph (b) of Paragraph 1 of Art 159 of the Constitution (Law No 67/2005)' <http://tamk.gov.ct.tr/dokuman/Tuzuk-ING.pdf>. [33] Rule 3(1). See <http://tamk.gov.ct.tr/dokuman/gerekli_evrak.pdf>. [34] Rule 3(3). [35] Rule 3(5)(a) and (b). [36] Art 13 Law No 67/2005. [37] Art 15. [38] Art 8. [39] Art 14.

https://doi.org/10.1017/S002058931800009X Published online by Cambridge University Press

other case. The number of applications withdrawn was 172, either because the applicants no longer wished to pursue them, because ownership was not proven, or because of other legal difficulties such as failure to provide documents as requested by the defendant. The rate of applications to the IPC has also fluctuated over the years, with a recent reduction possibly influenced by delays in the award of compensation. For example there were 1,926 applications in 2011, which decreased to 375 in 2014, and dropped further to 182 in 2015, to 50 in 2016, and to 81 in 2017.[40] The IPC's website states that a total of £266,231,421 has been awarded,[41] making an average of £304,961 for each of the 873 applications finalized exclusively by compensation. Approximately £55 million of the total amount of compensation awarded has still not been paid[42] and roughly £2 billion will be needed to finalize the 5,000 or so applications awaiting resolution.[43] The three main remedies, compensation, restitution and exchange, are considered in turn below.

### *1. Compensation*

According to Article 8(4) of Law No 67/2005, if the applicant's claim is for compensation, or if the IPC decides to award it, the following points are taken into account in determining the quantum: the market value of the property on 20 July 1974; any increase or decrease between 1974 and the date of payment; whether the applicant possesses property in the south belonging to a Turkish Cypriot; whether the applicant receives income from, or pays rent for, such property; in determining non-pecuniary damages and market value at the time of the decision with respect to claims concerning compensation for movables, the use of the property and the links the applicant has with it.

### *2. Restitution*

Since the IPC law is intended to respect the principle of bizonality, a UN parameter for negotiations about the Cyprus problem, restitution of immovable property can be effective either subsequent to the settlement of the Cyprus problem, or subject to the following conditions, within a reasonable time following the IPC's decision.

(a) It has not been transferred to any natural or legal person other than the State, it is not inside a military area or a military installation, it has not been allocated in the public interest, and its restoration to the original owner would not endanger national security or public order as a result of its location and physical condition.
(b) If the conditions set out in paragraph (a) above are not met, and if the property has not been allocated for the purposes of public interest or social justice, then

[40] See <http://tamk.gov.ct.tr/dokuman/istatistik_temmuz17.pdf>; 'Body to compensate Greek Cypriot Refugees running out of funds' *Cyprus Mail* (7 August 2017) <http://cyprus-mail.com/2017/08/07/body-compensate-greek-cypriot-refugees-running-funds/>. [41] See <http://tamk.gov.ct.tr/english/index.html>; <http://tamk.gov.ct.tr/dokuman/Bitenler.pdf>.

[42] '16 bin dönüm 235 milyon Sterlin'e Türk toprağı oldu' ['16,000 *donums* have become Turkish land for £235 million'] *Kıbrıs Gazetesi* (4 June 2017) <http://www.kibrisgazetesi.com/kibris/16-bin-donum-235-milyon-sterline-turk-topragi-oldu/19967>.

[43] 'Ağlayarak gelen Rumlar var'['There are Greek Cypriots who come in tears'] *Gündem Kıbrıs* (11 July 2017) <https://www.gundemkibris.com/aglayarak-gelen-rumlar-var-217098h.htm>.

https://doi.org/10.1017/S002058931800009X Published online by Cambridge University Press

a more detailed examination should be made by the IPC for restitution to take effect after the settlement of the Cyprus problem.[44]

### 3. Exchange

A third remedy provided by the IPC law is exchange of a property in the south for one of equal value to that which the applicant claims in the north. If the former is of higher value than the latter, the applicant must pay the difference. However, if the latter has the higher value, the difference shall be paid to the applicant. Applicants requesting exchange may also claim compensation for loss of use and non-pecuniary damage arising from violation of the right to respect for their home. So far the IPC has ruled in favour of exchange and compensation in only two cases brought with respect to 51 plots of land in Kyrenia by the same applicant. Following a successful application to the ECtHR,[45] in 2006 the IPC awarded $1.2 million compensation plus restoration in exchange for a large Turkish Cypriot-owned plot in Larnaca in the south.[46] However, since this land could not be let to the applicant because schools had been built on it, the Government of the Republic of Cyprus purchased it from him.[47] Satisfied that these arrangements were based on respect for human rights as protected by the Convention and its Protocols, the ECtHR struck the case out of its list.

## C. Challenges

The key questions which arise about the IPC are—how successful has it been, according to what criteria, and how might its peformance and contribution be improved? To begin with it is important to judge it according to its specific origins and mandate. As already indicated, it was never intended even to contribute towards resolving the Cyprus problem but rather to provide a remedy for the systemic violation of the right to peaceful enjoyment of property stemming from the losses sustained by Greek Cypriots displaced from north to south in the 1970s. As the figures above indicate, it has been a modest success according to this standard. It has, nevertheless, suffered from several problems including: excessive length and alleged unfairness of proceedings, the transparency of its decisions, corporate ownership, mortgages and other encumbrances, exchange, and the execution of judgments awarding compensation.

### 1. Length and fairness of proceedings

Complaints about excessive length of proceedings and delays, caused not least by the IPC adjourning default applications, have been litigated both before the High Administrative Court of the TRNC[48] and the ECtHR. In *Meleagrou and others v*

[44] See art 8 Law No 67/2005.

[45] *Eugenia Michaelidou Developments Ltd and Michael Tymvios v Turkey* Appl No 16163/90 Merits (31 July 2003).

[46] Sert (n 8) 248.

[47] S Evripidou, 'The IPC Insists Tymvios Case Sets Precedent' *Cyprus Mail* (12 July 2012) <http://www.cyprusedirectory.com/articleview.aspx?ID=25785>.

[48] *K.V. Mediterranean Tours Limited ile Taşınmaz Mal Komisyonu arasında* [K.V. Mediterranean Tours Limited v Immovable Property Commission] YİM 262/2012, D. 32/2015 (6 November 2015).

https://doi.org/10.1017/S002058931800009X Published online by Cambridge University Press

*Turkey*[49] the applicants claimed, among other things, that the length and unfairness of proceedings and the IPC's lack of independence, violated Article 6(1) ECHR (the right to fair trial). The ECtHR noted that a period of four years and eight months, including proceedings at the High Administrative Court of Appeal, had elapsed between the application being lodged and resolved which, it concluded, was not unreasonable in the circumstances.[50] Complaints of unfairness stemming from language difficulties at both the IPC and the High Administrative Court, and that the applicant's case had not been fully addressed by either, were also rejected on the grounds that representation was provided by a lawyer who understood Turkish and that translation facilities, including English versions of key documents, were available.[51] The application was, therefore, ruled manifestly ill-founded.[52] However, in *Joannou v Turkey* the ECtHR held that Article 1 of Protocol No. 1 had been violated because the manner in which the IPC had proceeded lacked 'coherence, diligence and appropriate expedition' as this provision requires.[53] The ECtHR noted that the proceedings before the IPC, which began in 2008 and had still not been formally concluded by 2017, were marked by repeated requests by the authorities for the applicant to submit additional documents and that the IPC itself had 'remained passive as regards these … making no effort to assess their reasonableness or relevance or to ensure that the parties' submissions were properly obtained and administered'.[54] The fact that the IPC does not have an independent budget and is subordinate to the Ministry of Interior, the defendant in its proceedings, also potentially raises doubts about its independence, credibility, and fairness, but these have yet to be litigated in Strasbourg.

### 2. *Transparency*

Since its reasons are not made public, it is difficult to determine how the IPC applies the statutory criteria for awarding compensation outlined above. However, judgments of the High Administrative Court shed some light on the matter. In application no 23/2008,[55] for example, the Ministry of the Interior and the Attorney General's Office argued that the IPC's decision had not been properly reasoned. The High Administrative Court considered whether the material and legal basis could, nevertheless, be inferred from its judgment. It noted that, while £2.5 million had been awarded for loss of use and market value, the IPC had not clearly indicated how this figure had been reached and how much had been awarded separately under each head. The judgment stated that 'in assessing the value of the property' the IPC had taken 'into account the purchase price of 135,000 Cyprus Pounds paid in 1973; the purchase price of GBP 1,400,000 agreed in 2006 … (and) … the offer of the Interested Party in 2007 to pay GBP 1,750,000 for the property'.[56] However, the High Administrative Court quashed its decision on the

[49] *Eleni Meleagrou and others v Turkey* Appl No 14434/09 Admissibility (2 April 2013); see also *Pavlos Loizou and others v Turkey* Appl No 50646/2015 Admissibility (26 October 2017) paras 50 and 80. [50] ibid para 18. [51] ibid paras 19–21. [52] ibid para 22.
[53] *Joannou v Turkey* Appl No 43240/2014 Merits (12 December 2017) para 104.
[54] ibid paras 91–106.
[55] *Acapulco Holdings Limited ile 67/2005 sayılı Yasa tahtında oluşturulan KKTC Taşınmaz Mal Komisyonu arasında* [Acapulco Holdings Limited v Immovable Property Commission established under Law No 67/2005] YİM 7/2013-8/2013, D. 13/2007 (18 May 2017). [56] ibid.

https://doi.org/10.1017/S002058931800009X Published online by Cambridge University Press

grounds that it had been delivered without sufficient justification because, although during the hearings, expert witness testimonies were heard and reports submitted as exhibits, the IPC had failed, as required by Law No 67/2005, to explain how the sum of £2.5 million had been determined. Nor had it indicated to which pieces of evidence it had given credit, how much weight had been attached to them, and which had been discarded.[57] It should be noted, however, that commentators have also criticized the ECtHR itself for not disclosing the basis of its calculations in determining the quantum of just satisfaction awards.[58]

### 3. *Corporate ownership*

Article 6(2) of the IPC law states that the applicant must prove beyond reasonable doubt that, inter alia, the immovable property was registered in their name on 20 July 1974 or that they inherited it legally. This creates difficulties where abandoned property is in corporate ownership because, in *Meleagrou and others v Turkey* the ECtHR rejected complaints that Article 1 of Protocol No 1, Article 8 and 14 ECHR had been violated in respect of fourteen plots of land owned by a registered company on the grounds that they were incompatible with the Convention on the *ratione materiae* criterion since the applicants could not claim property rights in land owned by a company, still in existence, in which they were shareholders.[59]

### 4. *Mortgages and other encumbrances*

Another problem faced by the IPC arises from the fact that the Ministry of the Interior is unwilling to make an offer of friendly settlement, and to take over properties, unless encumbrances such as mortgages, created on or before 20 July 1974, have been discharged. In such circumstances applicants have two choices. They can either contact the lender, usually a bank, to have the encumbrance discharged from the title at the Land Registry Office, or file a case at the relevant District Court (each in the north) to have it cancelled. The former is very difficult in practice and obtaining a judicial decision to cancel a mortgage can also be time consuming. However, it can nevertheless be achieved as two applicants proved, the first time the issue of mortgages in IPC proceedings was brought before the TRNC's law courts.[60] Both the District Court and the Court of Appeal cancelled the mortgage in question, stating that the applicant had made the payment required. The obligation to discharge mortgages/encumbrances on abandoned property might be considered an obstacle for applicants in IPC litigation, since it involves interests in addition to those of the applicant. But it is not a matter which the domestic legal system can simply ignore. There is, however, scope at the preliminary hearing stage for improving how this issue is managed.

[57] See also art 4 Law N 67/2005.

[58] A Mowbray, 'The European Court of Human Rights' Approach to Just Satisfaction' [1997] PL 647, 650.

[59] *Eleni Meleagrou and others v Turkey* (n 49) para 12; *Agrotexim and Others v Greece* Appl No 14807/89 Merits (24 October 1995) para 66. See also *Pavlos Loizou and others v Turkey* (n 49).

[60] *Girne Tapu Dairesi vasıtasıyla KKTC Başsavcılık v Christopher Stylianou ve diğeri arasında* [TRNC Attorney General's Office through Kyrenia Land Registry Office v Christopher Stylianou and others] YİM 66/2014 D. 20/2015 (18 May 2015).

https://doi.org/10.1017/S002058931800009X Published online by Cambridge University Press

Currently, the Ministry does not make an offer where there are mortgages/encumbrances on the property and, in such circumstances, the IPC also postpones the application indefinitely. A new preliminary hearing date is only provided once it has been proven that the mortgage/encumbrance has been discharged. However, if a conditional offer were made at the first preliminary hearing, the IPC could reach a final decision, without the need for a second preliminary hearing, once all the requisite documents had been submitted.

### 5. *Exchange*

As *Tymvios* revealed, better cooperation and coordination by the authories both north and south could make exchange smoother and more effective. Applicants might, for example, be more likely to choose this option if they received a positive or early response when attempting to do so and if a list of relevant properties was available. Practical difficulties of this kind could also be reduced if joint or parallel remedies for both Greek and Turkish Cypriot property claims were provided along the lines of the Property Commission envisaged by the Annan Plan.

### 6. *Execution of judgments awarding compensation*

Problems regarding the payment of compensation, including the lack of provision for interest, have also arisen.[61] For example, a successful IPC applicant filed a 'writ of seizure and sale', available to enforce court decisions, for eleven cars possessed by the TRNC Ministries of Finance and Agriculture.[62] However, cancelling it, the District Court of Nicosia stated that the friendly settlement agreement relinquishing relevant rights had not been signed, and that the decision of the IPC could, therefore, not be executed. Observing that Law No 67/2005 does not make the procedure and mode of enforcement clear,[63] the Court of Appeal held that the IPC's decision is not complete unless the Ministry responsible for Housing Affairs prepares a draft friendly settlement agreement and an invitation letter is served upon the successful applicant inviting signature within a month. It concluded, therefore, that until this occurs, the defendant is not obliged to pay the compensation awarded and it is thus not possible to file a writ of seizure and sale for execution. However, when the applicant applied to the ECtHR, the respondent paid up immediately and the complaint was withdrawn.[64]

[61] '35 milyon borçluyuz' ['We Owe 35 Million'] *Yeni Bakış Gazetesi* (12 July 2015) <http://www.yenibakisgazetesi.com/35-milyon-borcluyuz/2552/> (It had been mentioned that there are still applications which wait for payment)

[62] 'Bakan arabalarına Rum haciz koydurttu' ['Seizure over Vehicles of the Minister'] *Havadis Gazetesi* (7 July 2015) <http://www.havadiskibris.com/bakan-arabalarina-rum-haciz-koydurttu>; 'Karar var, Ödeme yok' ['There Are Decisions but Not Payments'] *Gündem Kıbrıs* (10 December 2015) <http://www.gundemkibris.com/tmk-tehlikede-158344h.htm>.

[63] See *Christopher Stylianou ile İskan İşleri ile Görevli Bakanlığı ve/veya Bakanlığı temsilen KKTC Başsavcılık arasında* [Christopher Stylianou v Ministry of Interior represented by the TRNC Attorney General's Office] Yargıtay/Hukuk No: 129/2015 (Genel İstida No: 39/2015), D.50/2015 (3 December 2015).

[64] 'Kritik dava geri çekildi, TMK uçurumun eşiğinden döndü' ['The Critical Case Has Been Withdrawn, the IPC has Returned from the Brink of the Abyss'] *Kıbrıs Postası* (5 August 2016) <http://www.kibrispostasi.com/index.php/cat/35/news/197255/PageName/KIBRIS_HABERLERI>.

https://doi.org/10.1017/S002058931800009X Published online by Cambridge University Press

Yet, in spite of this, not only is prompt payment apparently not happening, but, as already indicated, delay also seems to have led to a sharp decrease in the number of applications to the IPC. Solutions under discussion include a legal requirement upon current owners to contribute to the payment of compensation. But establishing an independent IPC compensation fund might provide a more attractive solution than, as some propose, requiring current owners to contribute to the sums awarded.

## IV. CONCLUSION

Several things are clear about the origins and character of the IPC. First, it is unlikely that it would ever have been established had it not been for a series of successful applications to the ECtHR from Greek Cypriots. Second, through these cases, its character has effectively been negotiated with Strasbourg by the authorities of the TRNC and Turkey. Third, while restitution or exchange of abandoned property may be awarded, the most commonly offered and most straightforward remedy is compensation.

Judged by its own rationale and mandate the IPC has been a modest success. A total of £266,231,421 has been awarded in compensation, an average of £304,961 for each of the 873 successful applications. But there have been challenges. Exchange has proven difficult on account of problems both with the process and in finding suitable, unencumbered matching properties. And, while the ECtHR has found IPC proceedings fair, they have nevertheless been lengthy. There have also been issues with the transparency of IPC decisions and the execution of judgments awarding compensation, each familiar difficulties with judicial and quasi-judicial processes in many States in Europe and elsewhere. And while the relevant law could be amended to deal with corporate ownership, this is not so easy for mortgages and other encumbrances.

But a bigger, and more complex question concerns the IPC's contribution to the resolution of the Cyprus problem more generally. Clearly, it was never intended to be even an ingredient in a more comprehensive settlement. Indeed, its principal rationale was to provide limited relief to a specific class of victim without the wider and deeper conflict needing first to be resolved. But this raises several issues. First, athough fewer in number, there is no comparable process for the abandoned property of Turkish Cypriots in the south. And, while from a material point of view, recompense for abandoned property is merely a matter of money, individuals and families may also have strong sentimental bonds with specific places. Moreover, the identity of traditional communities is often deeply connected with an historic and enduring attachment to territory. Like other divided societies this is one of the central characteristics of the Cyprus problem which a process such as that offered by the IPC is incapable of addressing.

https://doi.org/10.1017/S002058931800009X Published online by Cambridge University Press