While it may be artificial to say that a UK soldier would be protected by the ECHR while on a UK base, but not off it, this is no more artificial than saying that an Iraqi national is protected by the ECHR while on a UK base or while in UK custody, but not on the streets of Basra, as was the result in *Al-Skeini*. Thus, although the judgment of the majority in *Smith* denies the extraterritorial applicability of the ECHR to UK soldiers abroad on account of their status, this is the only result consistent with universality as the normative foundation of the ECHR and all other human rights treaties – unless, of course, it is *Al-Skeini* itself which was wrongly decided.

MARKO MILANOVIC

PROPERTY RIGHTS IN AN OCCUPIED TERRITORY

IN *Demopoulos and Others* v. *Turkey* (2010) 50 E.H.R.R. SE14, the European Court of Human Rights considered the issue of property rights in an occupied territory. The Applicants were Greek-Cypriots who claimed to be owners of property located in the northern part of Cyprus, which has been occupied by the Turkish military since 1974. They alleged the Turkish authorities prevented them from having access to, and from enjoying their homes, property and possessions, and relied variously on Article 1 of Protocol No. 1 (right to peaceful enjoyment of property), Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy), Article 14 (prohibition of discrimination) and Article 18 (limitations of restrictions on rights) of the European Convention on Human Rights.

The Grand Chamber of the ECtHR ruled that the Applicants had failed to exhaust all available domestic remedies and consequently dismissed their actions as inadmissible. The Chamber effectively ruled that, although a right of return has generally been understood as including a right to return to a home irrespective of the length of an occupation, where a fair and impartial alternative remedy exists (which may or may not award full restitution), this must be used instead.

In *Demopoulos*, the Applicants had chosen not to make use of the judicial remedy established by the Turkish Cypriot authorities: the Immovable Property Commission ("IPC"). The IPC was established in response to the ECtHR pilot-judgment, *Xenides-Arestis* v. *Turkey* (Application No. 46347/99 2006), in which the Court ruled against Turkey for failing to provide a remedy that secured effective redress for its violation of the aforementioned Convention rights. The IPC, which the ECtHR considered to provide a practical and effective remedy (*Xenides-Arestis* v. *Turkey* (2007) 44 E.H.R.R. SE13), has the power to

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make restitution or grant compensation in respect of property claims brought before it, provided the claim is made before 21 December 2011.

This case raises three issues: (1) the legal difficulties created by long-term occupation; (2) the Court's economic and organisational concerns; and (3) the effect of this ruling on the general understanding of the "right of return".

First, the Court had to respond to the tensions created by long-term occupations. The first tension exists between the need to "avoid a [legal] vacuum which operates to the detriment of those who live under occupation, or those who, living outside, may claim to have been victims of infringements of their rights" (at [96]) and the inadvertent legitimatisation of the occupying power's illegal acquisition of the property (occupations do not transfer sovereignty). The Court opted for ensuring that "individuals continue to receive protection of their rights on the ground on a daily basis" (at [96]) pending resolution of the political situation: *i.e.* that the Turkish authorities should be allowed to rectify their wrongs through the IPC. However, this also recognises that Turkey legitimately controls the property, thereby suggesting that it has acquired at least some rights by virtue of its invasion and long-term occupation.

The second tension exists between the property rights of displaced Greek Cypriots and the rights of individuals now living in their homes or using their land (some are Turkish-Cypriot refugees from the South of Cyprus, but many are Turkish settlers). According to the Court, it

> would eschew any notion that military occupation should be regarded as a form of adverse possession by which title can be legally transferred to the invading power. Yet it would be unrealistic to expect that as a result of these cases the Court should, or could, directly order the Turkish Government to ensure that these applicants obtain access to, and full possession of, their properties, irrespective of who is now living there or whether the property is allegedly in a militarily sensitive zone. (at [112])

This suggests the longer an occupation lasts, the more likely the Court will consider its consequences as being a *fait accompli*. Yet the Court ostensibly rejected this conclusion, considering itself obligated to take a practical approach to an overtly political problem: "the Court finds itself faced with cases burdened with a political, historical and factual complexity flowing from a problem that should have been resolved by all parties assuming full responsibility for finding a solution on a political level" (at [85]).

In 2009, the Court of Justice of the European Union ruled in *Apostolides* v. *Orams*, C-420/07, 2009, E.C.R. I-3571 that a European national court is under a duty, pursuant to EC Regulation No. 44/2001,

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to enforce a ruling by a Cypriot court concerning property in northern Cyprus, notwithstanding that the Cypriot Government does not exercise effective control in northern Cyprus. By adopting a formalistic technical approach to the Regulation, the CJEU was able to avoid the political difficulties and tensions experienced by the ECtHR in *Demopoulos* (Editorial, 'Who wants to be Pandora? The Court of Justice and the Cyprus Problem' [2009] 34 E.L. Rev. 345).

The second issue in this case relates to the Court's concern over handling a deluge of property claims relating to the occupation of northern Cyprus. Aside from the practical difficulties – there are approximately 1475 cases pending before the ECtHR concerning property claims – the Court is also anxious about performing the functions of a first instance court. In the Court's view, some of the key issues in these cases, such as the finding of basic facts or the calculation of monetary compensation, are "as a matter of principle and effective practice… [within] the domain of domestic jurisdiction" (at [65]).

Finally, there is the question of how this decision – that a fair and impartial remedy should be used in preference to full restitution – will be interpreted in light of the general international law understanding that a right of return effectively includes full restitution. Will the decision change the international law standard or will the international law standard still prevail in negotiations and legal advice? In the meantime, this decision is likely to prejudice negotiations for a political settlement (insofar as it may affect the relative bargaining position of parties), both for northern Cyprus and for other long-term occupations.

ANDREW SANGER

POSSESSION PROCEEDINGS AND HUMAN RIGHTS – THE FINAL WORD?

CAN an occupier, faced with eviction from local authority land, rely on Article 8 of the European Convention on Human Rights, which guarantees respect for one's home, to resist the consequences of domestic property law? Recent years have witnessed a fierce contest on the issue between the House of Lords and the European Court of Human Rights and the Supreme Court has now had the opportunity to consider this in *Manchester CC* v. *Pinnock* [2010] UKSC 45; [2010] 3 W.L.R. 1441.

On the one hand, the ECtHR has regarded it as fundamental that any person at risk of losing their home should be able to raise Article 8 to defend a possession action (see, *e.g. Connors* v. *UK* (2005) 40 E.H.R.R. 9, *McCann* v. *UK* (2008) 47 E.H.R.R. 40 and *Kay* v. *UK* (2010) App. No. 37341/06). On the other hand, the Lords, acting by a

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