

SOME THOUGHTS ON THE *DEMOPOULOS* CASE: A 'LEGALISTIC' APPROACH ON 'POLITICAL' MATTERS AND A 'POLITICAL' CONCLUSION ON A 'LEGAL' ISSUE

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Despite Camus' infamous statement that 'even in destruction, there's a right way and a wrong way – and there are limits', the recent judgment of the European Court of Human Rights (ECtHR) in the case of *Demopoulos and seven others* against Turkey has shown a paradoxical situation in many respects, as the Court saw neither the right or the wrong way, nor has delimited, effectively, the situation relating to the right to property for Greek Cypriots who have lost their properties following the 1974 Turkish invasion on the island.

Few things can be said about the effectiveness (or not) of lodging a great number of applications against Turkey before the ECtHR, relating to the same subject-matter. Some, have been thoroughly discussed in the Mass Media (in Cyprus only), in an attempt to overcome the shortcomings of the judgment. But, we have yet to see a united, common and methodical approach on the matter: Lawyers disagree on the implications of the decision in *Demopoulos*, the Government wrangles over the ineffectiveness of the 'Immovable Property Commission' ('IPC'), interpreting the judgment of the Court in its own way, the Media are (again) attempting to deal with the situation in a way to improve their numbers, and the political parties (in Cyprus only) have long shown an honest attempt to reach a united front in an issue that matters a lot, both in legal but also in political terms.

The realities, however, in relation to the actual judgment in the case of *Demopoulos* and seven others against Turkey are just simple: The policy and the influence of Turkish diplomacy have affected, to a greater or lesser extent, the decision of the Court or, rather, the developments that have led the Court to deliver such a judgment. We ought to have seen or, at least, predict, those developments. The creation of the 'Immovable Property Commission in the "TRNC"' in 2005 by operation of 'Law 67/2005 "TRNC"' was one of those developments that followed the rejection of the Annan Plan by the great majority of Greek Cypriots in 2004. The creation of the 'IPC', its procedures and mechanisms resembled those of a court of law. It has to be borne in mind, at this point, that one of the requirements of lodging an application before the ECtHR is to exhaust all effective (and sufficient) domestic legal remedies of the respondent State. It has to be also borne in mind that the ECtHR in the last inter-state complaint between *Cyprus and Turkey* has noted that remedies in the "TRNC" might be regarded, for the purposes of the European Convention of Human Rights (ECHR), as domestic remedies of Turkey. Where things went blatantly out of track (for the purposes of foreseeing the developments) was in the case of *Xenides-Aresti* (judgments of 2005 on admissibility and on the merits of the case), where the ECtHR examined 'Law 49/2003 of the "TRNC"', which provided for 'compensation for immovable properties', and maintained

that, on rather technical reasons, the remedies provided under 'Law 49/2003' did not satisfy the requirements for effective remedies set out in the ECHR (Article 35.1).

It is my firm belief that the results in *Demopoulos* could have well been predicted and that actions ought to have been taken earlier to eliminate any negative outcomes in such pilot cases before the ECtHR. Unfortunately, we have not really seen an attempt to eradicate the difficulties arising out of the establishment of a 'Property Commission' in the "TRNC" that was satisfying the requirements set out in the judgments on admissibility and on the merits in *Xenides-Aresti*. Instead, we are asked to act retroactively and not proactively. And even then, we are still to reach a unanimous decision on how to act.

By November 2009 there have been 433 cases that were brought before the 'IPC', with 85 of those been concluded – the vast majority of which by means of friendly settlement. Thus, it is a myth to say that Greek Cypriots have not already 'used' the 'mechanism' available in the 'TRNC'. We still have to see how many cases will be lodged before the 'IPC' following the decision of the ECtHR in the *Demopoulos* case, as the aforementioned number only relates to cases that were brought before the 'IPC' as of the date of the hearing in *Demopoulos* and not as of the date of the decision as to its admissibility.

It has to be pointed out that in between the judgments of the ECtHR in the cases of *Xenides-Aresti* and *Demopoulos and others* we have witnessed a triumph of justice and fairness in the case of *Apostolides v. Orams* that has followed a different avenue - that of the European Union and not that of the Council of Europe. Hopefully, we will not 'overload' those procedures available as well, but we will act in a way that will advance the interests of the future generations in Cyprus.