Legal Recognition of Human Rights  
Violations in Cyprus  
*Loizidou v Turkey and Cyprus v Turkey*

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**Introduction**

The recent decisions of the European Court of Human Rights in *Loizidou v Turkey* and *Cyprus v Turkey* are a vindication of the legal rights of the Greek and Turkish Cypriot citizens who continue to have their human rights violated by the illegal Turkish regime that has controlled northern Cyprus since 1974.

In July 1989, Mrs Titina Loizidou, a Greek-Cypriot refugee, commenced an action against Turkey in the European Court of Human Rights in Strasbourg. The basis of her claim was that the Turkish invasion of Cyprus in 1974 had denied her access to her property in her home town of Kyrenia and that this amounted to a breach of the European Convention on Human Rights. On 28 July 1998, some nine years later, her legal battle came to an end with the European Court of Human Rights ordering that Turkey pay Mrs Loizidou compensation of the equivalent of AUS $1,500,000 for the loss of enjoyment of her property rights.¹ Turkey has refused to comply with the Court’s orders despite its being a party to the European Convention on Human Rights and its desire to become a member of the European Union.

This paper outlines the background to *Loizidou v Turkey*, the main points from the judgment of the Court, and the events which have followed the

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judgment. It then outlines the judgment in the recent case of *Cyprus v Turkey*\(^2\) decided by the European Court of Human Rights on 10 May 2001. The decision in *Cyprus v Turkey* is further confirmation of the continuing breaches of the European Convention on Human Rights by Turkey in relation to its illegal activities in northern Cyprus. The paper further considers the implications of the two decisions in Australia and the potential for a class action by Australian citizens of Cypriot descent in the European Court of Human Rights relying on the precedent established by *Loizidou v Turkey*.

1. **Loizidou v Turkey**

1.1 Background to *Loizidou v Turkey*

Titina Loizidou was born and raised in Kyrenia in northern Cyprus. Both her father and grandfather were respected medical practitioners in the town. After leaving high school, she spent a short time in the United Kingdom to further her education, and then returned to Kyrenia to work. She married in 1972 and moved with her husband to Nicosia. Although she had re-located to Nicosia, she visited her family in Kyrenia frequently. By 1974 she had commenced construction of flats on a property given to her by her father. It was her intention to return to Kyrenia to live with her family in one of the flats once they were completed.\(^3\)

In her statement to the Court Mrs Loizidou described Kyrenia as:

more than just a place where I own property and to which I want to return. It is an inseparable part of myself, it lies at the very core of my being. For me Kyrenia is all those little experiences which make up a person’s development, experiences one should not be deprived of. It is the place where my family lived for generations, where I grew up, where every stone holds memories and meaning for me.

The 1974 Turkish invasion of northern Cyprus denied Mrs Loizidou the right to enjoy her home town and move and live freely with her family and


\(^3\) All the information in section1.1 is taken from the Statement of the Applicant Titina Loizidou (Application No. 15318/89).
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the Kyrenian people. The invasion made both her grandfather, in his eighties, and her parents, refugees in their own country.

Mrs Loizidou’s strong opposition to the continuous violation of her basic human rights and her strong desire to see Cyprus reunified and to return home to Kyrenia found expression in the aims and goals of the “Women Walk Home” movement. Women Walk Home is a movement whose aim is to see the reunification of Cyprus and to bring its two communities together. Mrs Loizidou joined the movement and participated in four peaceful marches held in 1975, 1987 and 1989. On all four occasions she and her fellow walkers were prevented from “Walking Home” by the Turkish troops.

On 19 March 1989 Mrs Loizidou participated in a march organised by Women Walk Home in the village of Lymbia. The aim of the march was to assert the right of Greek-Cypriot refugees to return to their homes. On this occasion, Mrs Loizidou led a group of 50 marchers carrying white flags up a hill towards the Church of the Holy Cross in the Turkish occupied part of Cyprus. The group passed the UN guard post at the bottom and proceeded peacefully up the hill until they reached the churchyard. At the top of the hill the women were surrounded by Turkish soldiers and prevented from moving any further. Mrs Loizidou and six or seven other women were then detained by members of the Turkish-Cypriot police force and taken by police escort to Nicosia. After being detained for more than ten hours she was released to her family at around midnight.

Mrs Loizidou described this experience as humiliating and degrading. It filled her with great sadness to see her homeland occupied by foreign troops and settlers. In her words, it seemed very sad and ironic that the Turks should consider her peaceful act a “frontier violation” in her own country. It is this experience that led her to take legal action against Turkey to demand that she be allowed to exercise her basic human right to “Go Home”, to move freely in her home town and to peacefully enjoy and develop her own property.

1.2 The judgment in Loizidou v Turkey

Mrs Loizidou lodged an application in the European Court of Human Rights in Strasbourg in July 1989. She argued that since the Turkish occupation of
northern Cyprus she had been denied access to her property and had consequently lost all control over it. This was said to constitute an unjustified interference with her right to the peaceful enjoyment of her property in breach of Article 1 of Protocol No 1 of the European Convention on Human Rights. Article 1 provides:

Every natural or legal person is entitled to the peaceful enjoyment of his or her possessions. No one shall be deprived of his or her possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.4

In addition, she claimed there had been a continuing violation of the right to respect for her home under Article 8 of the Convention.5 Accordingly, she claimed that Turkey was under a duty to provide to her just satisfaction in accordance with Article 50 of the Convention.6

On 18 December 1996, the European Court of Human Rights delivered its judgment in Loizidou v Turkey.7 It held that Mrs Loizidou remained the legal owner of her land but since 1974 had effectively lost all control, use and enjoyment of it. A majority of the Court found that this continual denial of access and enjoyment amounted to an interference with rights under Article 1, Protocol No 1 of the Convention and this was imputable to


5 Article 8 – Right to respect for private and family life
1. Everyone has the right to respect for his private and family life, his home and correspondence.
2. . . .

6 Article 50
If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the [...] Convention and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.

7 Loizidou v Turkey (Merits) (40/1993/435/514) (Strasbourg 18 December 1996).
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Turkey. However, as Mrs Loizidou did not have a home on the land in question, the Court found that there had been no interference with her right to respect for her home under Article 8 of the Convention. The Court found that she was entitled, under Article 50 of the Convention, to a measure of just satisfaction by way of compensation for the loss of enjoyment of her property rights.

On 28 July 1998, some nine years after she commenced her action, the European Court of Human Rights ordered that Turkey pay a total amount of 457,000 Cypriot pounds (AUS $1,500,000) to Mrs Loizidou. This was to compensate her for the eight year loss of enjoyment of her property rights and other costs and expenses she had incurred since Turkey recognised the jurisdiction of the European Court of Human Rights in 1990.

Turkey was given three months in which to pay the amount but, to date, some three and half years later, has refused to do so. This is despite repeated calls for it to do so by the Committee of Ministers of the Council of Europe – the body charged with responsibility to ensure compliance with judgments of the European Court of Human Rights. No other member of the 40 nation Council of Europe has previously failed to comply with a compensation order of the European Court of Human Rights.

In July 2000 the Committee of Ministers of the Council of Europe adopted a resolution that declared that “the refusal of Turkey to execute the judgment of the Court demonstrates a manifest disregard for its international obligations” and strongly insisted that “Turkey comply fully and without further delay” with the judgment. Despite this, Turkey continues to refuse to acknowledge its liability and pay the compensation awarded to Mrs Loizidou.

8 The Court found this by a majority of eleven votes to six.
9 The Court was unanimous on this point.
10 This matter was not ready for decision on the question of the amount of compensation. This was deferred for a decision at a later date.
1.3. Significance of the judgment

*Loizidou v Turkey* is a very significant decision for a number of reasons. First, the Court refused to recognise the so-called “Turkish Republic of Northern Cyprus”. It described the TRNC as a “subordinate local administration”. The Court recognised that Turkey is the State authority solely and legally responsible for the situation in the occupied north of the Republic of Cyprus and that any human rights violations are imputable to Turkey (at para 57).

Secondly, the judgment is a vindication of the rights of the individual against the State where he or she is deprived of their basic human right to free movement and settlement and enjoyment and exercise of property rights. The case establishes a precedent for similar legal action by the estimated 200,000 Greek-Cypriot refugees to be taken in the European Court of Human Rights against Turkey to seek similar compensation for the loss of enjoyment of their property rights.14

Thirdly, at a political level, the decision is significant for Turkey’s position in Europe. Should Turkey accept the decision of the European Court of Human Rights and pay the compensation awarded to Mrs Loizidou it will be seen to be acknowledging the illegality of its presence in northern Cyprus and its human rights abuses against the rightful owners of the land. Alternatively, should Turkey continue to refuse to comply with the European Court of Human Rights’ order it may face expulsion from the Council of Europe.15 Failure to comply with a judgment of the European Court of Human Rights may lead to the expulsion of a State from the Council of Europe.

Furthermore, all member states and candidates for membership of the European Union are required to conform to the decisions of the legally

13 *Loizidou v Turkey* Judgment (Merits).
14 Discussed in Eleni Apeyitou, “The Case of Loizidou v Turkey” http://www/hr-action.org/hr/titina.html.
15 Ibid.
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recognised institutions of the European Union, including the European Court of Human Rights. Failure to meet its legal obligations therefore not only puts Turkey at serious risk of being expelled from the Council of Europe but also jeopardises its chances of admission to the European Union.

Finally, the judgment is significant in the wider context of the negotiations to secure a just and viable solution to the Cyprus problem. It is a reaffirmation of the numerous UN Security Council resolutions that have called on Turkey to withdraw its military presence in northern Cyprus and allow the return of the refugees. In recognising that the Greek-Cypriot refugees remain the legal owners of their land, the judgment gives support to the claim that these property rights must be fully recognised and respected in any political settlement of the Cyprus problem. 16

2. Cyprus v Turkey

2.1 Background to Cyprus v Turkey

In November 1994, the Government of Cyprus lodged with the European Commission of Human Rights an application in relation to the continuing violations of the European Convention on Human Rights by Turkey in relation to the activities of the administration in control of northern Cyprus. After the Human Rights Commission found that a friendly settlement between the parties could not be reached the case was referred to the European Court of Human Rights for its consideration in 1999.

Before the Court, Cyprus alleged violations of the European Convention on Human Rights under numerous Articles. The allegations concerned the following four issues:

(a) the 1500 Greek-Cypriot missing persons and their relatives;
(b) the home and property of displaced persons;
(c) the living conditions of Greek-Cypriots in the Karpas region of northern Cyprus; and
(d) the rights of Turkish-Cypriots living in northern Cyprus.

16 Ibid.
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Cyprus alleged violations of the Convention under Articles 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 13, and Articles 1 and 2 of Protocol No 1, and Articles 14, 17 and 18.17

17 Article 1 – Obligation to respect human rights
The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Article 2 – Right to life
Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

Article 3 – Prohibition of torture
No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4 – Prohibition of slavery and forced labour
1. No one shall be held in slavery or servitude.
2. ...

Article 5 – Right to liberty and security
1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
   a. the lawful detention of a person after conviction by a competent court;
   b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
   c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or fleeing after having done so;
   d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
   e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
   f. the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

Article 6 – Right to a fair trial
1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law […]
2. Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law.
3. ...

Article 8 – Right to respect for private and family life
1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. …
Turkey refused to attend the hearing, arguing that the Turkish-Cypriot State was an independent entity.

2.2 The judgment in Cyprus v Turkey
In the Grand Chamber of the European Court of Human Rights in Strasbourg on 10 May 2001 the Court held, by sixteen votes to one, that Turkey was responsible under the European Convention on Human

Article 9 – Freedom of thought, conscience and religion
1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in a community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Article 10 – Freedom of Expression
1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers […]

Article 11 – Freedom of assembly and association
1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

Article 13 – Right to an effective remedy
Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 1 Protocol 1 – Protection of property
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.

Article 2 Protocol 1 – Right to education
No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure that such education and teaching in conformity with their own religious and philosophical convictions.

Article 14 – Prohibition of discrimination
The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
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Rights for the matters complained of by Cyprus in its application. The Court consisted of 17 members from Switzerland, Sweden, France, Italy, Austria, Czechoslovakia, Luxembourg, Slovenia, Croatia, Ireland, Macedonia, Moldova, Russia, and Latvia. The Court held that there had been 14 violations of the Convention.

(a) Greek-Cypriot missing persons and their relatives

The Court held there was a continuing violation of Article 2 (the right to life) and Article 5 (the right to liberty and security) in relation to the failure of the authorities in northern Cyprus to conduct an effective investigation into the whereabouts and fate of 1500 Greek-Cypriot missing persons who had disappeared. The Court further found that there was a violation of Article 3 (prohibition of inhuman or degrading treatment) in that the silence of the Turkish authorities in the face of the concern by relatives of the missing persons was of such a severe level that it amounted to inhuman treatment (at para 158).

(b) Home and property of displaced persons

The Court held that there had been a continuing violation of Article 8 (the right to respect for private and family life and home) concerning the refusal to allow the return of Greek-Cypriots to their homes in northern Cyprus (at para 175). It further held a continuing violation of Article 1 of Protocol 1 (protection of property) in relation to the denial of access to and control, use

Article 17 – Prohibition of abuse rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18 – Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

18 *Cyprus v Turkey* [2578/94] (10 May 2001).

19 The Court held this unanimously (para 130).

20 At para 136. This and all other violations of the Convention were held by a majority of sixteen votes to one.
and enjoyment of their property (at para 189). There was further found to be a violation of Article 13 (the right to an effective remedy) concerning the failure to provide the Greek-Cypriots not residing in northern Cyprus with any remedies to contest interferences with their rights under the Convention (at para 194).

(c) Living conditions of Greek-Cypriots in Karpas region

The Court held there had been a violation of Article 9 (freedom of thought, conscience and religion) in respect of the Greek-Cypriots living in northern Cyprus concerning the effects of restrictions on freedom of movement which limited access to places of worship and other aspects of religious life (at para 246). It further held there had been a violation of Article 10 (freedom of expression) in respect of Greek-Cypriots living in northern Cyprus in so far as school books for use in their primary school were subject to extensive measures of censorship (at para 254). Further, there was held to be a continuing violation of Article 1 of Protocol 1 as the Greek-Cypriots in this region were not guaranteed peaceful enjoyment of their possessions in the case of their departure from that region and also given that the inheritance rights of their relatives in southern Cyprus were not recognised (at para 269–270).

The Court further held that there had been a violation of the following Articles:

- Article 2 of Protocol 1 (right to education) in so far as there were no appropriate secondary school facilities (at para 280);
- Article 3 (discrimination and degrading treatment) in so far as the Greek-Cypriots living in the Karpas area had been subjected to discrimination amounting to degrading treatment (at para 315);
- Article 8 (respect for private and family life and home) (at para 324);
- Article 13 (absence of available remedies in respect of interferences with rights) (at para 324).
(d) Rights of Turkish-Cypriots in northern Cyprus

Finally, the Court held there had been a violation of Article 6 (the right to a fair trial) on account of the legislative practice of authorising the trial of civilians by military courts (at para 359).

The Court held that there had been no violation of the Convention in relation to the complaints raised under Article 4 (prohibition of slavery and forced labour), Article 11 (freedom of assembly and association), Article 14 (prohibition of discrimination), Article 17 (prohibition of abuse of rights) and Article 18 (limitation on use of restrictions of rights). As regards a number of other allegations, the Court found that it was not necessary for it to consider the issues raised.\(^{21}\)

2.3 Significance of the judgment

The decision in Cyprus v Turkey is further recognition of the human rights abuses by the illegal occupants of northern Cyprus against Greek and Turkish Cypriots. It gives further support to the claim, recognised by numerous UN Security Council Resolutions, that the administration in northern Cyprus is an illegal regime and that Turkey is accountable for the actions of the administration.

The case is different from Loizidou v Turkey in that because the action was taken by a government rather than an individual, there has been no order that compensation be paid by Turkey. However, failure by Turkey to address the matters in the Court’s decision could lead to Turkey’s expulsion from the Council of Europe. It is a further embarrassment for Turkey as it tries to persuade European Union leaders that its human rights record is good enough to qualify for formal membership of the Union.

3. Implications for Australia of the judgments

The final section of this paper addresses the implications for Australia of these two judgments of the European Court of Human Rights. The question

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\(^{21}\) Press Release issued by the Registrar Judgment in the case of Cyprus v Turkey (10 May 2001).
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has been raised as to what, if anything, the Australian Government can do to ensure that Turkey recognises its human rights obligations following these decisions.

There is little legal recourse that Australia itself has against Turkey. The cases arose under the European Convention on Human Rights to which Australia is not a party. Under international law, the general rule is that a convention applies as between parties to the convention and non-parties do not acquire any rights or become subject to any obligations under it. Accordingly, Australia does not have any legal right to require that Turkey comply with the obligations that arise under the Convention.

It is however open to the Australian Government to apply diplomatic and other pressure to Turkey to show its condemnation of its failure to comply with its legal obligations and to remind Turkey of its human rights obligations. Another way the Australian Government could show its commitment to supporting the Justice for Cyprus cause is by ensuring that it is on the agenda for discussion at the forthcoming Commonwealth Heads of Government meeting in Brisbane in 2002. As a member of the Commonwealth, Australia can show its support for another member of the Commonwealth, Cyprus.

Another way the Australian Government can show its support for the cause is by giving financial support to cases brought by Australian citizens of Cypriot descent in the European Court of Human Rights relying on the precedent established in the Loizidou case. In Australia, Justice for Cyprus Coordinating Committees (SEKA) have called for interested parties who wish to pursue their legal rights to register their details with the Pan Australian Justice for Cyprus Coordinating Committee (PASEKA) or their local State SEKA organisation in order to facilitate the lodgment of a class action against Turkey in the European Court of Human Rights.

In a country such as Australia, which has been the beneficiary of significant influxes of migrants, many of whom are refugees, the Commonwealth should look favourably upon an application to provide financial assistance to its citizens to help them to vindicate their human rights in their country of origin. The potential class action relying on the precedent
established in *Loizidou v Turkey* provides an opportunity for the Commonwealth to demonstrate its commitment to promoting the human rights of its own citizens who, in the case of the Greek-Cypriots concerned, are refugees as a consequence of the illegal occupation by Turkey of northern Cyprus. It is an opportunity for the Australian Government to demonstrate its commitment to a multi-cultural society. It presents an occasion for Australia to show its firm commitment to human rights for all.