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THE LOIZIDOU CASE: A MISCARRIAGE OF JUSTICE

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1. The fundamental flaw of the European Court of Human Rights in its judgement of the Loizidou case lies in the manner of its application of the European Convention for Human Rights to the Cyprus Question. As is known, the aim of the Convention is to secure public order in Europe, which is based on individual civil rights, human rights and the rule of law. In fact, the Court in its decision disregarded the historical, legal and political aspects of the Cyprus Question.

2. Although defined as a right in the Convention, it has been undisputed in principle and practice that the right to property can be restricted in the public interest and by the general principles of both international law and domestic law. Hence, restrictions can be placed upon the property rights of individuals. Such restrictions must of course be equitable and compensated for.

3. On the island of Cyprus there exist two separate democracies and two separate systems of public order. At the root of the Cyprus Question there lies the preoccupation of the Greek Cypriot side to force the Turkish Cypriot side to accept its jurisdiction and its public order. The relevant UN resolutions and principles uphold that the basis of democratic legitimacy in Cyprus is the consent of the two peoples and the 1960 international Treaties on Cyprus. The relevant UN resolutions and principles also confirm that the Treaties of Guarantee and of Alliance, which secure the 1960 'state of affairs', are still in force. The Turkish Cypriot people, whose separate right of self-determination was also recognised by the United Kingdom in 1956 and in 1958, are a political entity and a subject of international law since the political will of the Turkish Cypriot people was part of the collective consent that established the 1960 Treaties. The 1960 settlement was based on a partnership concept between the two politically equal and sovereign peoples and their separate democratic institutions.

4. The mandate given by the UN Security Council to United Nations Forces in Cyprus (UNFICYP), which commenced operations on the Island in 1964, is to contribute to the enforcement of the cease-fire as well as the restoration of law and order. The UN Secretary General's mission of good offices, which aims at achieving peace, recognises the existence of two democratic peoples of equal political status and envisages a bi-zonal political solution through which law and order would be restored on the Island of Cyprus on the fundamental basis (as was the case under the 1960 Treaties) of non-domination by one side over the other.

5. The fact of the matter is that, the basis of the Voluntary Exchange of Populations Agreement, which was reached in Vienna in 1975 under the auspices of the UN, is the consent of the two peoples. The UN, thereby, confirmed the existence of two systems of public order on the island. In order to build confidence between the two sides and to secure bizonality, restrictions on the freedom of movement, freedom of settlement and the right to property have been accepted within the framework of the mission of good offices.

6. In the light of the Voluntary Exchange of Populations Agreement and these realities, the Turkish Cypriot side used its administrative authority, which the UN also accepts, to transfer the ownership of immovable

properties which the Greek Cypriots abandoned in North Cyprus to the Turkish Cypriot State. In order to facilitate and settle property claims, through exchange or compensation, and in order to bring this about on a “global exchange” basis, Turkish Cypriots’ titles to immovable property they abandoned in South Cyprus were transferred to the Turkish Cypriot authorities. This “global exchange” formula, which will be the basis of a settlement of this issue, is also among the UN parameters and is approved by the UN Security Council.

7. The Court, which is an international judicial organ, without fully considering the sources of legitimacy in Cyprus, attempted to link the Convention to Security Council Resolution 541, which was adopted as the result of the declaration of the Turkish Republic of Northern Cyprus (TRNC) in 1983. However, the legitimacy of this Resolution can be legally challenged. The Resolution concluded that the declaration of the TRNC was “legally invalid” and called upon all states not to recognise the TRNC. The Resolution also called upon the parties to try to find a political solution within the framework of the mission of good offices. Some international jurists (such as Monroe Leigh and Prof. Elihu Lauterpacht) are of the opinion that the Security Council is not a judicial body and therefore the Resolution has no legal standing as regards the statehood of the TRNC. The UN Security Council’s Resolution 541, passed in 1983, is one of many resolutions concerning the Secretary-general’s mission of good offices in Cyprus, the aims of which are to support the efforts towards a political settlement.

8. Resolution 541 is not connected to basic principles of human rights. The public order referred to in the Convention is related to statehood and not to political recognition. As a matter of fact, the Commission, in the *Chrisostomos* case, confirmed the existence of a *de facto* legal and political regime in North Cyprus and the Committee of Delegates approved this decision. In any event, the TRNC meets the traditional criteria for statehood (a permanent population, a defined territory, an effective government and capacity to enter into relations with other states) as set out by the 1933 Montevideo Convention, which does not require international recognition of statehood. The principles of democracy and human rights, which today are considered among the criteria for statehood, are fully present in the TRNC. This fact is also confirmed by the US State Department in its annual Country Report on Human Rights Practices for Cyprus. Furthermore, the statement of the Italian Foreign Minister, Lamberto Dini, in August 1997 that there exists in Cyprus two administrations and two governments and the EU Foreign Affairs Commissioner, van den Broek’s, view that there are two legal systems in Cyprus confirm the statehood of the TRNC.

9. Turkey’s reservations on the issues of place (*ratione loci*) and time (*ratione temporis*) were rejected by the Commission and the Court, which declared such reservations *ultra vires* on the basis that the reservations contradicted the objectives of the European Convention for Human Rights. Thus, the Convention was linked to an international issue to which it cannot be applied. It was another legal error to impute responsibility in this matter to Turkey on account of its legitimate intervention in Cyprus in 1974. Considering that Turkey was responsible for the administrative acts and decisions of the TRNC Government aggravated this error. The UN Security Council never used the term ‘invasion’ and has not labelled Turkey an ‘invader’ in any of its resolutions. The Consultative Assembly of the Council of Europe confirmed the legitimacy of the 1974 intervention with its Resolution 573 (1974). The Consultative Assembly of the Council of Europe referred, in some of its resolutions, to the Turkish Cypriot side as “the Turkish Cypriot Administration”.

10. Another error of the Court is that it saw the presence of the Turkish troops in North Cyprus as a reason for rejecting the statehood of the TRNC. If this same rationale is applied more widely, then the right to statehood of the Greek Cypriot side should be rejected since Greek troops, the presence of which is reinforced by the Joint Military Doctrine, have been on the Island since 1960. In any event, the Greek Cypriot administration in South Cyprus can never gain legitimacy under the 1960 Treaties. Hence, had the Court looked into the matter impartially, on the basis of evidence and realities, then it would have acknowledged the fact that there exist in Cyprus two *de facto* regimes and states and that neither state has the right to dominate or represent the other in any way or form.

11. It should be noted that, the Court failed to take into account the Commission's legal conclusions. The

matter in question was taken up as if it were a clear-cut matter of property ownership. Furthermore, the act of border violation by Loizidou was associated with the irrelevant issue of the right to property and no fact-finding was made as regards the realities of Cyprus and the specific matter in question. No consideration was given to the de facto situation that came about as a result of the 1974 cease-fire agreement and that both sides are obliged to observe, the buffer-zone or to the fact that it is the UN and not Turkey or indeed the TRNC which is responsible for crossing the buffer-zone to enter the territory of the Turkish Republic of Northern Cyprus. Hence, the legal examination of the matter is incomplete.

12. In recent years the Turkish Cypriot side, with regard to the exchange of property, proposed the establishment of a joint property claims commission and put forward its modalities to the UN Secretary General and the Greek Cypriot side within the framework of the negotiation process. However, the Greek Cypriot administration's encouragement of individual applications and intervention in the cases are acts that destroy the chances of finding a political solution to the Cyprus Question. The Court, with its decision on the Loizidou case, is preventing the settlement of one of the core issues of the Cyprus Question and hence a bi-zonal political solution.

13. In conclusion, the Court, in dealing, with a legal issue, has unfortunately acted on the basis of lop-sided political considerations. Therefore, the Turkish Cypriot people, whose collective fundamental and political rights have been disregarded, have been victimised. Furthermore, Turkey has been unjustly imputed with responsibility for a matter over which she has no jurisdiction. The Court, having delivered its Judgement in the case, did not stop there but proceeded to order Turkey to pay compensation to Loizidou. This ruling of the Court has created yet another deadlock for the Cyprus Question. In short, the very decision itself is devoid of any legality in the context of the Cyprus Question.