Guide to applying to the Immovable Property Commission (IPC)

Background

The Immovable Property Compensation Commission was established by the introduction of Law 67/2005, the 'Law for Compensation, Exchange and Restitution of Immovable Properties' in response to various individual cases which had been brought before the European Court of Human Rights (ECHR) against Turkey by Greek Cypriots. In those cases, the Greek Cypriot applicants claimed that Turkey had violated their right to respect for their private and family life under Article 8 of the European Convention on Human Rights, because they had been forced to abandon their homes and properties in the North as a result of the military intervention in 1974 and had lost their right to physical use and occupation of these properties due to the fact that they were unable to access these properties as a result of the division of the island.

The first case, Loizidou v Turkey, was filed in the ECHR in 1989 and judgment was given in favour of Mrs. Loizidou in 1996, ordering Turkey to pay Mrs. Loizdou compensation and preserving Mrs. Loizidou's rights in the property. This decision set a precedent for future cases and further similar judgments were given by the ECHR in subsequent cases.

In order to apply to the ECHR, applicants must show that they have exhausted all other possible local remedies. Applications to the ECHR must be a 'last resort'. However, as there were no local remedies available for Greek Cypriots in respect of their properties in the North, they were able to apply directly to the ECHR. In 2005, the ECHR, in its judgment in the case of Xenides-Arestis v. Turkey, stated that this was a 'widespread problem affecting large numbers of people' and called upon Turkey to "introduce a remedy, which secures genuinely effective redress" for Greek Cypriots. In response to this, the TRNC Government in 2005 passed legislation to create the Immovable Property Commission which would be a local semi-judicial body made up of a minimum of 5 and a maximum of 7 members to hear and assess claims by Greek Cypriots in respect of their properties in the North and to make binding orders for the restitution, exchange or compensation for those properties to be granted to the Greek Cypriot applicants. In March 2010, the ECHR gave judgment in the case of Demopoulos v Turkey. In that case, the ECHR ruled that the Immovable Property Commission constitutes an effective local remedy for Greek Cypriot property claims. This means that Greek Cypriots must refer their claims to the IPC and must have exhausted this as a potential remedy before they can file a case against Turkey in the ECHR. As a response to this decision, there has been a significant increase in the number of Greek Cypriots applying to the Commission. Many Greek Cypriots have lost hope in the prospect of a comprehensive solution to the Cyprus problem being achieved and feel that an application to the Commission is now the only way to seek an effective remedy for their claims. Originally, the Commission was intended to operate from the date of the legislation until 21st December 2009. This has now been extended to December 2021.

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Procedure

Applications to the Commission can be made in person by the person making the claim or through a representative (usually a TRNC advocate).

Applications must be submitted using the Commission's application form, the format of which is laid down in the legislation. The applicant is the person making the claim under the law and the defendant or respondent is the Attorney General representing the TRNC Ministry of Housing Affairs.

Attached to the application must be an affidavit to be sworn at the Commission by the applicant in person or by the applicant's representative with authority to do so under a special power of attorney issued by the applicant to the representative. The affidavit must take the form shown in the legislation.

The following documents must also be attached to the application:

- Photocopy of the title deed for the property (the photocopy must be certified as a true copy either by a certifying officer or alternatively, at the Commission when the application is submitted)
- Photocopy of the site plan for the property (again, this must be certified as above)
- Photocopy of the passport/ID card of the applicant (again, this must be certified as above)
- Where the applicant is a company, photocopies of the company documents i.e. incorporation certificate, list of directors, list of shareholders and registered address (again, this must be certified as above)
- Where the property is in the name of a deceased person, the application can be submitted by the legal heirs of the deceased person. A declaration listing the names of the legal heirs of the deceased person from the village chief (muhtar) of the village in which the deceased lived must be obtained (again, this must be certified as above)
- Where the affidavit is sworn by a representative, the power of attorney authorising the representative to swear the affidavit, together with a photocopy of the passport/identity card of the representative (again, this must be certified as above)
- Where the application is being made by an advocate a retainer form signed by the applicant appointing the advocate.

In all applications, the applicant has the burden of proving beyond reasonable doubt that:

- the property in respect of which the rights are claims is the one stated in the application
- that the property was registered in the name of the applicant before 20th July 1974, or that he is the legal heir of the person in whose name the property was registered before 20th July 1974
- there are no other persons claiming rights in respect of the property who are not party to the application
- the compensation amount claimed represents the market value of the property on 20th July 1974 plus compensation for loss of use and damages for non-use of a home

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- the property was not subject to a mortgage and/or seizure and/or any other restraint imposed by a court order before 20th July 1974, or where it was, the details of this must be stated.

Where, according to the laws of the TRNC, a third party now holds the right to the property, that third party shall have the right to participate in the proceedings. Where, however, the applicant has requested confidentiality, the person holding the right to the property is given a simple notification that a claim has been made to the Commission.

Once an application is submitted, it will be served on the Ministry for Housing Affairs within 21 working days. The Ministry must then respond, giving its opinion, within 30 working days of service.

Following the submission of the opinion of the Ministry, the Commission may call a meeting to give directions in relation to further detail or documents required and whether a site inspection will be carried out. The Commission has the power, should it deem appropriate, to call and hear witnesses. Decisions of the Commission are taken on a simple majority basis with a quorum of 2/3 of the total number of members. The Commission must announce a decision within 3 months. However, the writing of the reasoned decision may be extended by up to 6 months in some circumstances.

Once the Commission has reached a decision, the Ministry will issue the applicant with an offer of a 'Friendly Settlement' setting out the terms of the settlement offer. The applicant must respond to this within 1 month. If the applicant accepts the offer, the Friendly Settlement will be signed and executed. If the applicant rejects the offer, a notice of disagreement will be issued. If no settlement can be reached, the applicant has the right to appeal to the High Administrative Court and then, ultimately to the ECHR.

Remedy

The Commission has the power to order restitution (reinstatement of the property to applicant), exchange (offering an alternative property to the applicant) or compensation for the property and also to order compensation for loss of use and non-pecuniary damages where the property in question was a home.

Restitution can only be granted where:

1. Ownership or use of the property has not been transferred to any person other than the state, provided that restitution does not constitute a threat to national security and public order and is not in a military zone.

2. If ownership or use of the property has been transferred to another person under the laws of the TRNC, restitution is only possible where:
    a. no improvement has been made to the property, or
    b. any improvement which has been made to the property is less than the value of the property when it was abandoned, or
    c. no project for such improvement has been issued by the relevant authorities, or

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d. the property has not been acquired in exchange of property left in the South of Cyprus.

In the event that restitution is granted, the person who has ownership/use under the laws of the TRNC will be compensated by the TRNC. Restitution in this situation would only take effect after a settlement to the Cyprus problem. In the meantime, the person who has ownership/use under the laws of the TRNC would not be able to sell or improve the property.

In the event that restitution is not possible, as outlined above, the Commission can consider offering an exchange or compensation.

Compensation is calculated as follows:

1. The market value on 20th July 1974
2. Loss of income and increase in value since 1974
3. Whether the applicant is in possession of any Turkish Cypriot property in the South and whether the applicant is receiving any income from such property
4. Non-pecuniary damages based on the manner of use of the property and the loss of individual, family and moral ties to the property

Where an exchange is proposed, if the value of the property being offered in exchange is more than the value of the property which is the subject of the claim, the applicant will pay the difference. Where the value of the property being offered for exchange is less than the value of the property which is the subject of the claim, the applicant will be compensated for the difference. In addition to exchange, the applicant shall be entitled to also claim for compensation for loss of use and for non-pecuniary damages.

Once a settlement has been reached, applicants cannot make a claim in respect of their property again in the future.

Applications can also be made to the Commission in respect of movable property which was lost in 1974.

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