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THE EUROPEAN COURT OF HUMAN RIGHTS
PROCLAIMS THAT IT WILL NEITHER FORGIVE
NOR FORGET THOSE WHO WAGE WAR

Shantel Talbot

I. INTRODUCTION

It was a warm and sunny day on the beautiful island of Cyprus. In direct contrast to the serene surroundings, men, women, and children frantically fled their childhood homes, in hopes of reaching safety by going undetected by the invading Turkish troops.¹ However, many did not make it.

Witness Mrs[.] K said that on July 21, 1974, the second day of the Turkish invasion, she and a group of villagers from Elia were captured when, fleeing from bombardment, they tried to reach a range of mountains. All 12 men arrested were civilians. They were separated from the women and shot in front of the women, under the orders of a Turkish officer. Some of the men were holding children, three of whom were wounded.²

Standing before the European Commission of Human Rights, one witness after another told story after story of needless bloodshed and various other human rights violations the Turkish troops committed during the invasion of Cyprus from July to August 1974.³ Scores of people last seen in the custody of these Turkish soldiers are still missing and are presumed to be dead.⁴

Cyprus brought an inter-state case before the European Court of Human Rights (the Court), and the Court handed down its principal judgment in 2001.⁵ For various reasons, including a letter from the Court advising Cyprus not to pursue a just satisfaction⁶ claim at that time, the

¹ See *Cyprus v. Turkey* (Report of the Commission), App. Nos. 6780/74 and 6950/75, 4 Eur. H.R. Rep. 482 and 556, ¶ 112 (1976), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-142540> [hereinafter *Report of the Commission*].

² *The terrible secrets of the Turkish invasion of Cyprus*, SUNDAY TIMES (Jan. 23, 1977), <http://www.cyprus-conflict.org/materials/sundaytimes.html> (last visited Sept 19, 2015). See also *Report of the Commission*, *supra* note 1, at ¶ 320.

³ See *Report of the Commission*, *supra* note 1, at ¶¶ 60–75.

⁴ See *Cyprus v. Turkey* (Just Satisfaction), Eur. Ct. H.R. 1, 16 (2014), available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144151#{\"itemid\":\[\"001-144151\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144151#{\) (¶ 48).

⁵ See *Cyprus v. Turkey* (Principal Judgment), Eur. Ct. H.R. 1, 99 (2001), available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59454#{\"itemid\":\[\"001-59454\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59454#{\) (§ VIII).

⁶ “If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party . . . that is to say a sum of money by way of compensation for [sustained] damage.” European Convention for the

issue of just satisfaction was not brought before the Court with this initial claim.⁷ In 2014, some four decades after the initial violation, the Court finally ruled against Turkey in an inter-State application for just satisfaction.⁸

By applying Article 41⁹ of the European Convention on Human Rights to an inter-State case and awarding just satisfaction in the form of €90,000,000 punitive damages to Cyprus, the Court's unprecedented ruling in *Cyprus v. Turkey* broadens the scope of the Court's authority and involvement in corralling errant nations.

The Court's judges make their intentions and hopes for the nature of this judgment well-known through their concurring and dissenting opinions.¹⁰ This is the first inter-State case to be brought before the Court seeking just satisfaction, and therefore, this judgment is influential in crystallizing a new trend in general international law of proffering remedies in inter-State cases.¹¹ This case is a platform from which the Court pronounced its dedication to punishing errant member States through pecuniary damages, regardless of how much time has passed since the actual violations occurred.¹²

Turkey, as a member of the Council of Europe, is bound to follow the Court's judgment and to make reparations for any human rights violations that it commits.¹³ However, Turkey has taken a dismissive stance towards this judgment.¹⁴ The consequences that accompany dismissing a judgment and the likelihood that the Court will enforce them vary widely. While Turkey can withstand some of this condemnation because of its more recent political isolation, many less isolated countries, particularly those belonging to the European Union (E.U.), may not be able to dismiss such a ruling so easily.¹⁵

The purpose of this Comment is to outline the current ruling's implications for both the Court and States (countries) that choose to violate human rights. Following the introduction of the topic in Part I, Part II lays out a concise history of the Cyprus Island. Specifically, it focuses on the settlement of Cyprus, examines the time period leading up to the partition of Cyprus in 1974 from a modern point of view, reviews the country's political climate from the Turkish invasion to the Grand

Protection of Human Rights and Fundamental Freedoms art. 41, Nov. 4, 1950, C.E.T.S. 5, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm> [hereinafter *Convention*].

⁷ See *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. at 2 (¶ 3).

⁸ *Id.*

⁹ *Convention*, *supra* note 6, at art. 41 (defining just satisfaction).

¹⁰ *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. at 23–41 (concurring and dissenting).

¹¹ *Id.* at 13 (¶ 39).

¹² *Id.* at 30–37 (¶¶ 12–19) (Albuquerque, J., concurring).

¹³ *Convention*, *supra* note 6, at art. 46.

¹⁴ See Alexander Christie-Miller, *Its EU dream thwarted, Turkey rejects 90 million-euro Cyprus fine*, CHRISTIAN SCI. MONITOR (May 13, 2014), <http://www.csmonitor.com/World/Middle-East/2014/0513/Its-EU-dream-thwarted-Turkey-rejects-90-million-euro-Cyprus-fine>.

¹⁵ Mark Lowen, *Erdogan's 'New Turkey' drifts towards isolation*, BBC NEWS (Nov. 20, 2014), <http://www.bbc.com/news/world-europe-30111043>.

Chamber's primary inter-State judgment against Cyprus in 2001, and examines the Court's May 2014 ruling on Article 41. Part II also contains a brief explanation of Turkey's legal responsibility to comply with the aforementioned judgments.

Part III outlines the ways in which the Court expands its powers with this latest judgment. Furthermore, it focuses on how the Court solidifies an international law principle to favor applying compensatory damages to inter-State cases, and how it thus expanded the remedies available for it to prescribe. Part III also discusses how the Court may apply this new prescription of powers to other countries and incidents occurring in the world today.

Finally, Part IV addresses Turkey's reaction to the case, and whether or not Turkey's reaction diminishes the Court's influence.

II. CYPRUS: A SUCCINCT MODERN HISTORY

The balance of power on the island of Cyprus bespeaks change, as it has shifted fairly steadily since its first inhabitants, the Mycenaean-Archaeon Greeks, settled there in the ninth millennium BC.¹⁶ Cyprus experienced a long list of alien powers under the rule of foreign invaders, including the Assyrians, Egyptians, Persians, Greeks, Macedonians, Romans, Franks, Venetians, British, and Ottoman Turks.¹⁷ Perhaps the most significant shift occurred when the Ottoman Turkish troops invading Cyprus in 1570, eventually annexed it, and remained in power until 1878, when they turned the island's administration over to the British in exchange for protection against a possible Russian invasion.¹⁸ Despite the Turk's annexation, at least part of the island retained its Greek identity.¹⁹

A. Cyprus Leading Up to Partition

Greek- and Turkish-Cypriots²⁰ have a lengthy and harried past of general disagreement that precedes World War I.²¹ Britain annexed Cyprus island in 1914, and the Turkish-Cypriots pledged their loyalty to the British during World War I.²² The Greek-Cypriots, however, were not as devoted to Britain as their Turkish counterparts, and the Greek-

¹⁶ *History of Cyprus*, HIGH COMM'N REP. CYPRUS CANBERRA, http://www.mfa.gov.cy/mfa/highcom/highcomcanberra.nsf/cyprus02_en/cyprus02_en?OpenDocument (last visited Sept. 19, 2015).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Meaning a person from Cyprus.

²¹ 30. *British Cyprus (1914-1960)*, UNIV. CENT. ARK., <http://uca.edu/politicalscience/dadm-project/europerussiacentral-asia-region/british-cyprus-1914-1960/> (last visited Sept. 19, 2015) [hereinafter *British Cyprus*].

²² *Id.*

Cypriots formed an assembly in 1921 to demand *enosis* (unification with Greece).²³ However, Britain declared Cyprus to be a British colony in 1925 and in 1929 the British Colonial Secretary officially denied the Greek-Cypriots' demands for unification with Greece in 1929.²⁴

After the Greek-Cypriots' attempts, the Turkish-Cypriots, with objections of their own, tried to form their own National Congress in 1931.²⁵ Predictably, the British Colonial Government refused to recognize the Congress.²⁶ That same year, the Legislative Council's Greek-Cypriot members resigned from their positions in protest after the British Colonial Government passed a tariff law.²⁷ The tariff law fomented yet another round of riots and unrest from the Greek-Cypriots, which the British again suppressed.²⁸

In 1950, a plebiscite was held, where ninety-six percent of the Greek-Cypriot population voted in favor of unification with Greece.²⁹ In response, the British Colonial Government banned all protests and demonstrations.³⁰ Consequently, Greece brought the Cyprus matter before the United Nations (UN); however, the UN General Assembly replied that it was not "deemed advisable to make a decision on the question of Cyprus."³¹

In 1955, the EOKA (*National Organization of Cypriot Fighters*), who was not only anti-Britain, but also pro-unification with Greece, and is now known as a terrorist group, revolted against the British.³² The EOKA revolt ultimately culminated in the deportation of a leading advocate of *enosis*, the Greek-Cypriot Archbishop Makarios, for "actively fostering terrorism" and for supporting the creation of EOKA.³³ In 1960, after a four-year struggle between both Greek- and Turkish-Cypriots vying for power, Cyprus was finally granted its independence.³⁴

Shortly after returning to Cyprus on March 1, 1959, Archbishop Makarios was elected President.³⁵ He, along with Turkish-Cypriot Vice President Fazıl Küçük, attempted to form the government of the newly

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* See also 1956: *Britain deports Cyprus Archbishop*, BBC NEWS, http://news.bbc.co.uk/onthisday/hi/dates/stories/march/9/newsid_3745000/3745505.stm (last visited Sept 19, 2015).

³² *British Cyprus*, *supra* note 21. See also 1956: *Britain deports Cyprus Archbishop*, *supra* note 31.

³³ *Id.*

³⁴ *Modern History of Cyprus*. EMBASSY REP. CYPRUS WASH. D.C., <http://www.cyprusembassy.net/home/index.php?module=page&pid=8> (last visited Sept. 19, 2015).

³⁵ *British Cyprus*, *supra* note 21. See also *Markarios elected president of Cyprus*, BBC NEWS, http://news.bbc.co.uk/onthisday/hi/dates/stories/december/14/newsid_3747000/3747247.stm (last visited Sept. 19, 2015).

established country.³⁶ The new Cypriot constitution mandated quotas of Turkish representatives in government.³⁷ However, according to Greek-Cypriots, the Turkish quotas exceeded the percentage of the Turkish population.³⁸ It was not long before Makarios proposed abolishing several passages of the constitution written to guarantee the rights and interests of Turkish-Cypriots, demonstrating the extensive differences that still existed between the two groups.³⁹ As a result, the Turkish-Cypriots rebelled and refused to report to their public service positions or attend to their seats in the Cabinet, and violence erupted between the two co-inhabitants of the island.⁴⁰ An autonomous Cyprus, as an independent state that protected the rights of both its Greek and Turkish citizens, seemed to be a failed experiment.

B. *Cyprus v. Turkey*: 1974 to the Primary Ruling

In 1974, a coup, backed by the military junta in Athens, Greece, ousted Makarios based on concerns that he was “influenced by communism and [was] unwilling to commit to continued close ties with Athens.”⁴¹ Turkey deployed troops in response to this takeover under the premise of helping Turkish-Cypriots that were in “desperate need of protection,” and then took possession of thirty-seven percent of the northern part of the island.⁴² As a result, nearly all Greek-Cypriots (almost 200,000 people, or forty percent of the total Greek-Cypriot population) fled from that portion of Cyprus; and nearly all the Turkish-Cypriots moved to the Turkish controlled territory.⁴³ According to a conservative estimate, ninety percent of the Greek-Cypriots formerly living in the occupied area fled south or to British sovereign bases.⁴⁴ Some 13,000 Greek-Cypriot farmers remained in the remote Karpas peninsula located in the Turkish military zone.⁴⁵ That number is said to have decreased over the years to less than 600 individuals.⁴⁶

Upon the eviction of the Greek-Cypriots and through the aid of Turkish national troops, a new government was established: the Turkish Republic of Northern Cyprus (TRNC).⁴⁷ Turkey continues to control this

³⁶ Paul Rowan & Stephen Armstrong, *Cyprus and the European Union*, PROGRAMS INT’L EDUC. RESOURCES, http://www.yale.edu/macmillan/pier/resources/lessons/cyprus_history.htm (last visited Sept. 19, 2015).

³⁷ ANDREW BOROWIEC, *CYPRUS: A TROUBLED ISLAND* 47 (2000).

³⁸ *Id.*

³⁹ Rowan & Armstrong, *supra* note 36.

⁴⁰ *Id.* See also *Modern History of Cyprus*, *supra* note 34.

⁴¹ Rowan & Armstrong, *supra* note 36.

⁴² *Id.*

⁴³ *Id.* See also *Modern History of Cyprus*, *supra* note 34.

⁴⁴ See BOROWIEC, *supra* note 37, at 97.

⁴⁵ *Id.* at 98.

⁴⁶ *Id.*

⁴⁷ Rowan & Armstrong, *supra* note 36.

portion of the island⁴⁸ and is the only country to recognize the TRNC government.⁴⁹ In fact, the UN Security Council and other international bodies condemned the TRNC government.⁵⁰ Because the government of TRNC has not been recognized, the Court, in its 2001 judgment, held Turkey responsible for the various human rights violations that were committed, stating, “Having effective overall control over northern Cyprus, [Turkey’s] responsibility cannot be confined to the acts of its own soldiers or officials . . . [b]ut must also be engaged by virtue of the acts of the local administration which survives by virtue of Turkish military and other support.”⁵¹

In 2001, Turkey was found to have committed fourteen violations of the European Convention of Human Rights (the Convention).⁵² Most notably, the Court found that there had been a “continuing violation of Article 2 on account of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances.”⁵³ The Court also found violations of Article 3 in relation to the Karpas peninsula’s enclaved Greek-Cypriots for condemning the inhabitants to live in conditions that were “debasement and [that] violate the very notion of respect for the human dignity of its members.”⁵⁴ However, the Court unanimously held that it was not yet ready to make a decision about the “issue of the possible application of Article 41” at the time, so it “adjourned consideration” on the topic.⁵⁵

C. *Cyprus v. Turkey*: Just Satisfaction

In 2010, nine years after the principal judgment, Cyprus submitted its claims for just satisfaction.⁵⁶ The Court heard the application and passed a judgment in May 2014.⁵⁷ Turkey raised three main arguments against applying just satisfaction in this case.⁵⁸ First, Turkey claimed that too much time had passed since the principal judgment, and that Cyprus had had a duty, under international law, to bring the case as soon as

⁴⁸ *The Council of Europe and the Cyprus Question*, EMBASSY OF THE REPUBLIC OF CYPRUS IN WASHINGTON D.C. (last visited Sept 19, 2015) <http://www.cypriusembassy.net/home/index.php?module=page&pid=18>.

⁴⁹ *Modern History of Cyprus*, *supra* note 34.

⁵⁰ *Id.*

⁵¹ Loizidou v. Turkey, 310 Eur. Ct. H.R. (ser. A) 1, 18 (1995), available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57920#{"itemid":\["001-57920"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57920#{); (¶ 62). See also *Cyprus v. Turkey (Principal Judgment)*, Eur. Ct. H.R. at 20–21 (¶ 77).

⁵² See *Cyprus v. Turkey (Principal Judgment)*, Eur. Ct. H.R. 1.

⁵³ *Id.* at 36 (¶ 136).

⁵⁴ *Id.* at 74 (¶ 309).

⁵⁵ *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. at 2 (¶ 4).

⁵⁶ *Id.* (¶ 6).

⁵⁷ See *id.*

⁵⁸ See *id.*

possible.⁵⁹ Second, Turkey asserted that the Court should not apply Article 41 to inter-State cases because just satisfaction should only be applied to individuals.⁶⁰ Lastly, Turkey argued that the Court had discretion in dispensing judgments and that the initial judgment thirteen years earlier was punishment enough.⁶¹

Addressing the first point, Turkey argued that this latest filing should not be permitted because it would be time-barred to individual applicants, and the thirteen-year gap between the judgment on the merits and this renewed application was far too long.⁶² The Court held that while the rules for a timely filing for just satisfaction had since changed and would have precluded Cyprus from filing,⁶³ the changes did not apply in this particular case because of the special circumstances surrounding it.⁶⁴ Namely, the Court advised Cyprus, in a letter sent to both governments, not to apply for just satisfaction in 2001 when the Court was deciding the case on the merits.⁶⁵ In addition, the Court's initial judgment set aside claims for just satisfaction, and did not preclude Cyprus from ever coming before the Court again.⁶⁶ The Court also noted that Cyprus did not expressly say it would never apply for just satisfaction, so there was no reason for Turkey to believe that Cyprus would not.⁶⁷

As to the second point, the Cypriot government initially asked for €12,000 to be allocated to each of the surviving relatives of each of the 1,456 missing persons, but later raised the amount to €20,000 per individual.⁶⁸ It also asked for €50,000 for each Greek-Cypriot resident of the Karpas peninsula.⁶⁹ The fact that Cyprus did not attempt to identify the number of potential beneficiaries Turkey claimed from the Karpas peninsula⁷⁰ did not seem to sway the Court from offering reparations. This was one of Turkish Judge Karakaş' strongest complaints in his dissenting opinion, especially since the Court belabored the idea that just satisfaction was pertinent to inter-State cases only because the money was to be given to the individuals and not to the State; yet, these individuals were not identified.⁷¹

⁵⁹ *Id.* at 5–6 (¶¶ 18–19).

⁶⁰ *Id.* at 13 (¶ 38).

⁶¹ *Id.* at 18 (¶ 55).

⁶² *Id.* at 5–7 (¶¶ 18, 22).

⁶³ *See id.* at 8 (¶ 25).

⁶⁴ *Id.* at 8–9 (¶ 26). (“In the principal judgment the issue of a possible award of just satisfaction was adjourned, which clearly and unambiguously meant that the Court had not excluded the possibility of resuming the examination of this issue at some appropriate point in the future. Neither of the parties could therefore reasonably expect that this matter would be left unaddressed, or that it would be extinguished or nullified by the passage of time.”).

⁶⁵ *Id.* at 2 (¶ 3).

⁶⁶ *Id.* at 8–9 (¶ 26).

⁶⁷ *Id.* at 5 (¶ 15).

⁶⁸ *Id.* at 16 (¶ 49).

⁶⁹ *Id.* at 17 (¶ 53).

⁷⁰ *Id.*

⁷¹ *Id.* at 55 (Karakaş, J., dissenting).

Along with the UN Committee of Missing Persons, Turkey argued that it had progressed since the initial judgment and many of the missing persons had been found, thereby turning the “missing persons” issue into a “dead persons” issue, bringing to light a whole new set of procedural obligations and time limits.⁷² Although Turkey argued that the Court had acknowledged their “considerable progress in locating and identifying the victims’ remains,”⁷³ various third parties seem to disagree. Several non-profits have written to the Committee of Ministers (the body overseeing Turkey’s compliance with the principal judgment) to complain about Turkey’s lack of compliance with former judgments and to advocate for the Committee of Ministers to do more to force Turkey into compliance.⁷⁴

Finally, as to the last point, Turkey argued that the Court had discretion in offering punitive damages, and in light of the improvements to living conditions in Karpas made in the years since the initial judgment, the Court should have “decide[d] that the finding of a violation in the judgment on the merits offers a sufficient satisfaction.”⁷⁵ The dissenting opinion of Judge Karakaş discusses the reasoning behind this argument by referencing the *Corfu Channel* case where, “by reason of the acts of the British Navy in Albanian waters in the course of the Operation of November 12th and 13th, 1946, the United Kingdom violated the sovereignty of the People’s Republic of Albania, and that *this declaration by the Court constitutes in itself appropriate*

⁷² *Id.* at 6–7 (¶ 21).

⁷³ *Id.* See also Charalambous and Others v. Turkey, Eur. Ct. H.R. 1 (2012), available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110459#{\"itemid\":\[\"001-110459\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110459#{\).

⁷⁴ See Letter from Organisation of Relatives of Missing Cypriots (UK) to Director General, Directorate General for Human Rights and the Rule of Law, Secretariat of the Council of Europe (Nov. 12, 2013), available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2415508&SecMode=1&DocId=2090616&Usage=2> (“It is only with Turkey’s co-operation that our problem will finally be resolved. We feel extremely aggrieved that successive Turkish Governments have never shown the goodwill necessary to provide the solution to this long standing humanitarian issue. . . . The case of our Missing is the longest standing unresolved issue before the ECHR and the Committee, and how it is managed and resolved will set a precedent for current and future cases. The upholding of justice and human rights rest on the shoulders of these institutions.”). See Letter from Ashia Community Council to Mr. Philippe Boillat, Director General of Human Rights and the Rule of Law, Department for the Execution of Judgments of the ECHR, Council of Europe (Nov. 29, 2013), available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2415496&SecMode=1&DocId=2090582&Usage=2> (complaining that the sites of mass graves that the CMP were given to examine and identify the missing had previously been excavated with evidence that “[t]he exhumation and disappearance of the remains of these individuals clearly intended to erase the evidence of a war crime;” the Council called for the investigation into what happened to these people to continue). See Letter from Organisation of relatives of undeclared prisoners and missing persons of Cyprus to Secretariat of the Committee of Ministers, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2242750&SecMode=1&DocId=1988110&Usage=2> (requesting that that Committee pressure Turkey into allowing them to dig up their father’s remains which are a short distance from where a piece of his skull had been allegedly moved into a mass grave to halt the investigations).

⁷⁵ *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. at 18 (¶¶ 54–55).

satisfaction.”⁷⁶ Judge Karakaş went on to cite two other cases, one as recent as 2000, each of which similarly concluded that the Court has discretion to decide if the just satisfaction is sufficient.⁷⁷

However, the Court clearly did not find this argument persuasive. Whether or not the Court took Turkey’s supposed progress and past judgments into account during its just compensation analysis is unknown. Regardless of the weight given to past judgments, the Court reiterated its general statement in the *Varnava v. Others* judgment, saying, “non-pecuniary awards serve to give recognition to the fact that moral damage occurred as a result of a breach of a fundamental human right and reflect in the broadest of terms the severity of the damage.”⁷⁸

Ultimately, the Court awarded the Cypriot Government “aggregate sums of €30,000,000 for non-pecuniary damage suffered by the surviving relatives of the missing persons, and €60,000,000 for non-pecuniary damage suffered by the enclaved residents of Karpas peninsula.”⁷⁹ The Cypriot Government was given the task of divvying the reward to the individuals the judgment recognized.⁸⁰

Following a judgment, it is every Member State’s responsibility to comply with judgments by making restitution, usually in the form of legislation reform, to ensure that the human rights violation will not continue.⁸¹ The Court may also grant just satisfaction in the form of monetary compensation if the applicant State has received damage.⁸² It is then the Committee of Minister’s responsibility to see that the sum is collected.⁸³

D. The Duty of Restitution/Reparation in Human Rights Cases

Perhaps the most pertinent article in the Convention to the current judgment is Article 46, which reads, “[t]he High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.”⁸⁴ This agreement portrays the demand that each State comply with all judgments laid against them. Turkey, and every other Contracting Party to the Convention, has thus implicitly agreed to obey the edicts of the Court. In the words of the Court:

Under Article 46, the State Party is under an obligation not just to pay those concerned the sums awarded by the Court by way of just satisfaction, but also to take

⁷⁶ *Id.* at 53 (Karakaş, J., dissenting).

⁷⁷ *Id.* at 53–54 (Karakaş, J., dissenting).

⁷⁸ *Id.* at 18 (¶ 56).

⁷⁹ *Id.* at 19 (¶ 58).

⁸⁰ *Id.* at 21 (¶ 5(c)).

⁸¹ *The ECHR in 50 Questions*, EUR. CT. OF HUMAN RIGHTS 10, http://www.echr.coe.int/Documents/50Questions_ENG.pdf (last visited Sept. 19, 2015) (¶ 41).

⁸² *Id.*

⁸³ *Id.* (¶ 42).

⁸⁴ *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. at 3 (¶ 11).

individual or, if appropriate, general measures in its domestic legal order, or both, to put an end to the violation found by the Court and to redress the effects, the aim being to put the applicant, as far as possible, in the position he would have been in had the requirements of the Convention not been disregarded.⁸⁵

As the Court noted, it is widely accepted under international law that States have an obligation to not only cease and desist from performing whatever wrongful act they are committing,⁸⁶ but also to offer reparations as a remedy for the wrong that was done.⁸⁷ In 2001, the International Law Commission codified these norms in the Articles of Responsibility of States for Internationally Wrongful Acts (Articles of Responsibility).⁸⁸ Article 30 of the Articles of Responsibility affirms that the State that perpetrated the wrongdoing has an obligation “(a) to cease that act, if it is continuing;” and “(b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.”⁸⁹ This obligation exists separately from the obligation to make reparations as declared in Article 31, which states, “The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.”⁹⁰

This idea of being obligated to pay reparations predates the Articles of Responsibility and goes as far back as the *Factory of Chorzów* case brought before the Permanent Court of International Justice (PCIJ) in 1927.⁹¹ “The PCIJ added that reparation ‘is the indispensable complement of a failure to apply a convention and there is no need for this to be stated in the convention itself.’”⁹² Subsequently, various courts, including the International Court of Justice (ICJ) have acknowledged the concept.⁹³ Likewise, the Court in the present just satisfaction case followed this reasoning when responding to Turkey’s argument that the initial ruling on the merits was enough punishment.

⁸⁵ *Id.* at 9–10 (¶ 27).

⁸⁶ Draft Articles on Responsibility of States for Internationally Wrongful Acts, U.N. GAOR, 56th Sess., Supp. No. 10, U.N. Doc. A/56/10 (2001), available at http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf (Article 30: “The State responsible for the internationally wrongful act is under an obligation: (a) to cease that act, if it is continuing; (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.”).

⁸⁷ Antoine Buyse, *Lost and Regained? Restitution as a Remedy for Human Rights Violations in the Context of International Law*, 68 HEIDELBERG J. INT’L L. 129, 130 (2008).

⁸⁸ Draft Articles on Responsibility of States for Internationally Wrongful Acts, *supra* note 86 (art. 30).

⁸⁹ *Id.* (art. 30).

⁹⁰ *Id.* (art. 31).

⁹¹ Buyse, *supra* note 87, at 130.

⁹² *Id.*

⁹³ *Id.*

Having received the judgment in 2001, Turkey would be responsible for making reparations based on general international law alone. However, it is subject to an even stronger compulsion. Turkey ratified the Convention in 1954 and subsequently accepted the right to apply to the Court individually in 1987.⁹⁴ Just three short years later, Turkey chose to accept the decisions of the Court and pay any potential fines imposed on it in judgments.⁹⁵ In 1993, Turkey brought its first individual application before the Court, and the Court made its first decisions on Turkey in 1995.⁹⁶ Therefore, Turkey is not only subject to general international law, but also to the rules laid out in the Convention.

The Convention⁹⁷ has several articles that pertain to remedies.⁹⁸ However, the Court's ability to order restitution comes from Article 41.⁹⁹ "The Court analogizes Article 41 of the Convention to the principle of reparations in public international law."¹⁰⁰ The Court also proclaims that the power of an international court or tribunal "which has jurisdiction with the respect to a claim of State responsibility," and "has, as an aspect of that jurisdiction, the power to award compensation for damage suffered."¹⁰¹

After declaring such an order, Article 46 of the Convention instructs that, "[t]he final judgment of the Court shall [then] be transmitted to the Committee of Ministers, which shall supervise its execution."¹⁰² Therefore, the Committee of Ministers of the Council of Europe is in charge of supervising the Grand Chamber of the Court's finalized execution of judgments.¹⁰³

III. THE EXPANDING POWERS OF THE COURT

The analysis laid out in the concurring opinions accompanying the judgment makes it clear that the Court is using the just satisfaction judgment as a launching board to afford itself more power in levying punitive punishments against noncompliant Contracting Parties. One concurring opinion, in which multiple judges agreed with, declared this judgment as heralding "a new era in the enforcement of human rights upheld by the Court and mark[ing] an important step in ensuring respect

⁹⁴ *JITEM's illegal actions cost Turkey a fortune*, TODAY'S ZAMAN (Aug. 27, 2008, 8:36 PM), http://www.todayszaman.com/national_jitems-illegal-actions-cost-turkey-a-fortune_151355.html.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Convention*, *supra* note 6, at art. 41.

⁹⁸ *See generally id.* at arts. 13, 41. (for example, Article 13 provides for an "effective remedy before a national authority").

⁹⁹ *Convention*, *supra* note 6.

¹⁰⁰ *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. at 13–14 (¶ 41).

¹⁰¹ *Id.*

¹⁰² *Id.* at 3 (¶ 11).

¹⁰³ *Supervision of execution of judgments of the European Court of Human Rights*, COUNCIL EUR., http://www.coe.int/T/CM/humanRights_en.asp (last visited Sept. 19, 2015).

for the rule of law in Europe.”¹⁰⁴ Another concurring opinion indicated this was

the most important contribution to peace in Europe in the history of the European Court of Human Rights The Court has not only acknowledged the applicability of Article 41 of the European Convention on Human Rights . . . to inter-State applications and established criteria for the assessment of the time-limit for these just satisfaction claims, but has awarded punitive damages to the claimant State.¹⁰⁵

In light of the “historical importance of this judgment,”¹⁰⁶ this Part will expound upon (a) the importance of establishing customary law in inter-State cases and in the application of punitive damages; (b) the application of a Court-created time limit for the payment of the claims; and (c) possible applications of this newfound power.

A. Establishing Customary Law in Favor of Inter-State Cases

The Convention distinguishes between two types of applications that can be brought before the Court: “individual applications lodged by any person, group of individuals, company or NGO having a complaint about a violation of their rights, and inter-State applications brought by one State against another.”¹⁰⁷ Individuals present most applications brought before the Court.¹⁰⁸ In fact, Greek-Cypriots brought several individual cases against Turkey pertaining to the same set of facts.¹⁰⁹ Although inter-State cases are rare,¹¹⁰ the current judgment for just satisfaction hails from an inter-State application.

Article 33 of the Convention allows the Court to hear inter-State cases.¹¹¹ It reads: “Any High Contracting Party may refer to the Court *any alleged breach* of the provisions of the Convention and the Protocols thereto by another High Contracting Party.”¹¹² This is a very broad standard. Despite Turkey’s continual assertions to the contrary, Cyprus, or any other State for that matter, can refer even an alleged breach of the Convention to the Court. A State may hold another State responsible for

¹⁰⁴ *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. at 23 (Zupančič, Gyulumyan, Björgvinsson, Nicolaou, Sajó, Trajkovska, Power-Forde, Vučinić and Albuquerque, J., joint concurring).

¹⁰⁵ *Id.* at 24 (Albuquerque, J., concurring).

¹⁰⁶ *Id.*

¹⁰⁷ *The ECHR in 50 Questions*, *supra* note 81, at 6 (¶ 19).

¹⁰⁸ *Id.*

¹⁰⁹ See *Varnava and Others v. Turkey*, Eur. Ct. H.R.

¹¹⁰ *The ECHR in 50 Questions*, *supra* note 81, at 6 (¶ 19).

¹¹¹ *Convention*, *supra* note 6, at art. 33.

¹¹² *Id.*

any violation of the Convention, including military regime violations, as was demonstrated in the case of *Denmark, Norway, Sweden, and the Netherlands v. Greece* in 1967–68.¹¹³

While inter-State cases have come before the Court in the past, this is the first instance where the Court used the just satisfaction judgment to levy punishment. However, the Cypriot Government argued that the Court previously implied that Article 41 applied to inter-State cases by mentioning in a previous case that it was “not necessary to apply it,” rather than dismissing the potential Article 41 judgment.¹¹⁴

In response, Turkey referred to *Varnava and Others v. Turkey*, where the Court used just satisfaction to allow individual applicants to bring separate claims, despite the fact that an inter-State case was already judged upon the same set of facts; this reasoning took precedence over general international law.¹¹⁵ In this 2009 *Varnava and Others* case, Turkey objected to the individual applications because the inter-State application had already had a judgment made and used the same set of facts.¹¹⁶ However, the Court replied that the judgment “did not specify in respect [to] which individual missing persons [the judgments] were made (see *Cyprus v. Turkey*, . . . where the evidence was found to bear out the assertion that ‘many persons now missing’ had been detained by the respondent Government or forces for which they were responsible).”¹¹⁷ Therefore, the judgment cannot be regarded as determinative in the individuals’ applications. Additionally, the Court determined that it had “the competence to issue just satisfaction awards for pecuniary and non-pecuniary damage suffered by individual applicants and to give indications under Article 46 as to any general or individual measures that might be taken.”¹¹⁸ Therefore, the individual applicants’ applications could result in different issues or outcomes than those that arose in the inter-State case, and the Court could examine those applicants’ applications.¹¹⁹

While the Court did not expressly say that just satisfaction could only be brought in individual cases, Turkey’s interpretation of the Court’s decision seemed sound. The Court listed ways that the individual applications differed from the already decided State application and

¹¹³ Isabella Risini, *Can’t get no just satisfaction? The Cyprus v. Turkey judgment of the European Court of Human Rights*, CAMBRIDGE J. INT’L & COMP. L. (May 23, 2014), <http://cjlcl.org.uk/2014/05/23/cant-get-just-satisfaction-cyprus-v-turkey-judgment-european-court-human-rights/>.

¹¹⁴ *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. 1, 11 (2014), available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144151#{"itemid":\["001-144151"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144151#{) (¶ 33), arguing that in *Ireland v. United Kingdom*, 25 Eur. Ct. H.R. (ser. A) (1978), available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57506#{"itemid":\["001-57506"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57506#{), the Court asked the applicant if it would like the Court to consider just satisfaction, but Ireland declined the invitation.

¹¹⁵ *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. at 20 (¶ 23).

¹¹⁶ *Varnava and Others v. Turkey*, Euf. Ct. H.R. at ¶¶ 118–19.

¹¹⁷ *Id.*

¹¹⁸ *Id.* (emphasis added).

¹¹⁹ *Id.* ¶ 119.

expressly noted that individual applicants could bring just satisfaction claims.¹²⁰

The Court countered Turkey's argument by asserting, "the provisions of the Convention cannot be applied and interpreted in a vacuum."¹²¹ The Court went on to say, "Despite its specific character as a human rights instrument, the Convention is an international treaty to be interpreted in accordance with the relevant norms and principles of public international law."¹²²

The Court also noted that Article 41 is *lex specialis* to general international law,¹²³ but still chose a broad interpretation of Article 41 that mirrors that of general international law. The Court explained that while Article 41 would be allowed in inter-State cases, the conveyance of an award by the Court would be decided on a case-by-case basis depending on the type of complaint offered.¹²⁴ Also, the award would only be granted if the actual victims of the harm and recipients of the award were individuals themselves.¹²⁵ The Court stated:

[I]t must be always kept in mind that, according to the very nature of the Convention, it is the individual, and not the State, who is directly or indirectly harmed and primarily "injured" by a violation of one or several Convention rights. Therefore, if just satisfaction is afforded in an inter-State case, it should always be done for the benefit of individual victims.¹²⁶

This means that general complaints brought under Article 33 about systemic issues or administrative practices will not warrant compensation under Article 41, as the main goal of those cases is that of "vindicating the public order of Europe within the framework of collective responsibility under the Convention."¹²⁷

According to the dissenting opinion of Judge Karakaş and the partly concurring and partly dissenting opinion of Judge Casadevall, this is contradictory. Using vivid language, Judge Karakaş argued:

According to the principles of public international law on reparation for non-pecuniary damage in cases not concerning diplomatic protection, the violation found in the judgment on the merits should constitute sufficient

¹²⁰ See *Varnava and Others v. Turkey*, Eut. Ct. H.R. at ¶ 119.

¹²¹ *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. 20 (¶ 23).

¹²² *Id.*

¹²³ *Id.* at 14 (¶ 42).

¹²⁴ *Id.* See also Risini, *supra* note 113.

¹²⁵ *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. at 20 (¶¶ 46–47).

¹²⁶ *Id.* (¶ 46).

¹²⁷ *Id.* (¶¶ 43–44).

just satisfaction, without it being necessary to award aggregate, not to say speculative, sums such as those claimed by the Cypriot Government in respect of “non-pecuniary damage” on behalf of a vague and unidentifiable number of persons purported to be still alive.¹²⁸

Judge Karakas argued that this case was not one with identifiable individuals that the Court described in its judgment.¹²⁹ Judge Casadevall agrees with this sentiment in part. He voted in favor of awarding just satisfaction to the identified 1,456 missing persons, but rejected applying just satisfaction to the residents of the Karpas peninsula “who [were] defined in an abstract manner . . . [as] individuals who ha[d] to be identified and listed *ex post facto* eleven years after the delivery of the judgment on the merits.”¹³⁰ He went on to say:

If numerous difficulties are likely to be encountered in providing compensation (within eighteen months) to the heirs of the 1,456 missing persons, I dread to think of the complications that are bound to arise in identifying and listing the thousands of displaced persons. Supervising the execution of this judgment will be no easy task.¹³¹

In his concurring opinion, Judge Albuquerque acknowledged that there was no certainty that the payments will reach the actual victims in the Karpas peninsula, and he uses that fact, among others, to illustrate that the “punitive nature of this compensation is flagrant.”¹³²

Judge Albuquerque put into plain terms his view of the award given to Cyprus.¹³³ He heralded the fact that punitive damages are a tool for upholding human rights and ensuring the “observance of the engagements undertaken by the Contracting Parties.”¹³⁴ He maintained that the use of punitive damages was especially prudent in this case because Turkey committed a myriad of human rights violations “over a significant period of time in Northern Cyprus,”¹³⁵ did not investigate

¹²⁸ *Id.* at 53 (Karakas, J., dissenting).

¹²⁹ *Id.*

¹³⁰ *Id.* at 46 (Casadevall, J., partly concurring and partly dissenting).

¹³¹ *Id.*

¹³² *Id.* at 31 (¶ 13) (Albuquerque, J., concurring).

¹³³ *Id.* (Albuquerque, J., concurring) (“In spite of the fact that the identity of the victims of the respondent State’s actions and omissions and the ensuing massive and gross human rights violations committed in the Karpas enclave could not be established, that the missing persons claims would have been time-barred if lodged individually by their respective families and that there can be no certainty that the indemnities obtained will devolve on the individuals concerned, the Court punished the respondent State for its unlawful actions and omissions and their harmful consequences. There is nothing new about this procedure.”).

¹³⁴ *Id.* at 37 (¶ 19) (Albuquerque, J., concurring).

¹³⁵ *Id.*

these violations “adequately and in a timely manner,”¹³⁶ and “deliberately failed year after year to comply with the Grand Chamber’s judgment on the merits delivered a long time ago with regard to these specific violations.”¹³⁷

The door to awarding just satisfaction in inter-State applications has been opened, and, read in conjunction with the concurring opinions, it appears that just satisfaction has been used as a means to punish Turkey for its lack of compliance with the Convention and past judgments. In spite of Turkey’s objections, just satisfaction can now be applied even though the harmed individuals have not been expressly identified.

B. Possible Applications of this Newfound Power

In light of the €90,000,000 judgment meted out, and of the explanations for that judgment laid out in Judge Albuquerque’s concurring opinion, one can easily see that the Court hoped to use the punitive nature of the award to keep errant nations that violate human rights from becoming complacent with paying money alone as compensation for their actions. This Part gives an example of how just satisfaction may have a bearing on the recent occupations carried out by Russia.

The Court’s ruling came at an inconvenient time for the Greek and Turkish Cypriots who had just resumed peace talks after a two-year hiatus.¹³⁸ One must assume that the Court had a very good reason for potentially undermining an attempt at peace. It did not escape anyone’s attention that this forthright ruling immediately followed Crimea’s amalgamation into Russia. Based on the pointed remarks of the concurring opinions, it is highly likely that the Court plans on taking a more active role in policing any European aggressor.

Judge Pinto de Albuquerque severely admonished in his concurring opinion:

The message to member States of the Council of Europe is clear: those member States that wage war, invade or support foreign armed intervention in other member States must pay for their unlawful actions and the consequences of their actions, and the victims, their families and the States of their nationality have a vested and enforceable right to be duly and fully compensated by the responsible warring State. War and its tragic consequences are no longer tolerable in Europe and those member States that do not comply with this

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ See Christie-Miller, *supra* note 14.

principle must be made judicially accountable for their actions, without prejudice to additional political consequences.¹³⁹

While this is an aggressive statement toward any warmongering State, it came just months after Ukraine filed an application against Russia before the European Court of Human Rights.¹⁴⁰ The timing of this decision did not go unnoticed; one cannot help but wonder if this judgment came in response to Russia's annexation of Crimea that took place just two months prior to the pronouncement of this judgment.¹⁴¹

Was this judgment a direct response to current events? The question of jurisdiction was an existing obstacle for holding States that practiced armed intervention responsible before the European Court of Human Rights for their intrusion and subsequent human rights violation. The Russia-Crimea fact pattern somewhat mirrors that of the Turkey-Cyprus situation. Turkey invaded Cyprus and took hold of thirty-seven percent of the island to protect the interests of the Turkish Cypriots there.¹⁴² Although a separate government (the TRNC) was established, it was not recognized by any other State; thus, in the eyes of international law, Cyprus has only one government.¹⁴³ Through the laws of secession, Russia claimed that Crimea was an independent state and that Russian citizens needed Russia to help protect their interests.¹⁴⁴ Like Turkey's sole recognition of the TRNC, Russia was the only State to recognize Crimea as an independent State before absorbing it.¹⁴⁵ Since Crimea's secession was not recognized by any other State, its absorption into Russia was achieved by a use of force, and therefore, no other State recognized the change in territory to Ukraine.¹⁴⁶ Some British legal scholars summarized this position succinctly:

A state in occupation of the territory of another state, even following a lawful armed conflict, has no right to annex that territory. Therefore, even if, hypothetically, one were to entertain the multiple justifications put

¹³⁹ *Cyprus v. Turkey, (Just Satisfaction)*, Eur. Ct. H.R. at 20 (¶ 1) (Albuquerque, J., concurring).

¹⁴⁰ Thomas D. Grant, *Crimea after Cyprus v. Turkey: Just Satisfaction for Unlawful Annexation?*, BLOG EUR. J. OF INT'L L. (May 19, 2014), <http://www.ejiltalk.org/crimea-after-cyprus-v-turkey-just-satisfaction-for-unlawful-annexation/>.

¹⁴¹ *Id.* See also Anthony Lott, *Cyprus v. Turkey: Just Satisfaction and Added Aggression*, 18 AM. SOC'Y OF INT'L L. 18 (Aug. 27, 2014) available at <http://www.asil.org/insights/volume/18/issue/18/cyprus-v-turkey-just-satisfaction-and-acts-aggression>.

¹⁴² See *History of Cyprus*, *supra* note 16.

¹⁴³ See *Cyprus v. Turkey (Principal Judgment)*, Eur. Ct. H.R. at 5 (¶ 14).

¹⁴⁴ Dr. Roy Allison, et al., *The Ukraine Crisis: An International Law Perspective*, CHATHAM HOUSE: THE ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS (July 11, 2014), available at http://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20140711UkraineLaw_0.pdf.

¹⁴⁵ *Id.*

¹⁴⁶ See *id.*

forward by Russia as to why the intervention into Ukraine might have been lawful, the international community would still be obliged not to recognize the changes to the territorial boundaries of Ukraine.¹⁴⁷

If the international community has not recognized Crimea as being under Russian jurisdiction, how will the Court hold Russia responsible for human rights violations taking place in what it perceives as the territory of Ukraine? The principal judgment in *Cyprus v. Turkey* held Turkey liable for human rights violations taking place in Northern Cyprus without acknowledging that it actually annexed Northern Cyprus. Thus, that judgment could be applied in this situation where Russia has forcefully annexed Crimea.¹⁴⁸ A senior research fellow writing for the European Journal of International Law alleges:

This holding indeed is significant to Ukraine, as it makes clear that non-recognition is not inconsistent with applying the rules and procedures of the Convention against the State which purports to have effected the change of boundaries by force. Applied to Crimea, the Russian Federation is answerable under the Convention for its conduct in that territory, and to hold Russia answerable does nothing to qualify or erode the general non-recognition of the unlawful annexation.¹⁴⁹

Regardless of whether the international community recognizes the territory shift, the Cyprus judgment allows for the punishment of warring States. It may be too soon to identify the exact violations of the Convention that have been committed by Russia during its invasion of Crimea. However, the initial indications are distressing, as demonstrated by the fact that the Court has already issued interim measures to Russia in relation to Articles 2 and 3, under Rule 39.¹⁵⁰

Clearly the passage of time—forty years—from the initial situation in Cyprus that gave rise to the claims did not serve to deter the Court from deciding the *Cyprus* just satisfaction claim. Philippe Sands, a law professor from the University College London said in an interview with *The Guardian*, “It’s a strong signal that the passage of time will not diminish the consequences or costs of illegal occupation.”¹⁵¹ This begs the question: Is Russia, or any other country that performs armed

¹⁴⁷ *Id.*

¹⁴⁸ Grant, *supra* note 140.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Julian Borger, *European Court Orders Turkey to Pay Damages for Cyprus Invasion*, THE GUARDIAN (May 12, 2014), <http://www.theguardian.com/law/2014/may/12/european-court-human-rights-turkey-compensation-cyprus-invasion>.

intervention in another State, opening itself up to just satisfaction claims indefinitely? Judge Albuquerque, in his concurring opinion, alluded to the fact that they just might, when he observed that “international law in general did not at that time, and still does not today, set a specific time-limit for just satisfaction claims.”¹⁵² It appears that the just satisfaction ruling is the Court’s way of showing that the passage of time (more than forty years in this case) does not preclude the Court from meting out harsh remedies.

The Court’s forceful statement was clear, at least in theory. But, has the Court overstepped its bounds? Will it be taken seriously? Can it be trusted to be a neutral intermediary between States? Some believe that the aggressive stance taken by the Court, namely openly stating that the just satisfaction award is a punishment, will likely not achieve the goal of correcting Turkey’s unsatisfactory behavior and may even be counterproductive.¹⁵³

Isabella Risini, in an article posted in the Cambridge Journal of International and Comparative Law, cautioned the Court to remember that “the success of the Convention, is, as it was sixty years ago, inherently depended on the cooperation of states.” She goes on to say,

The objectivity and neutrality of the Court will be essential if it wants to be taken seriously as an arbiter in cases such as the one between Russia and Ukraine, especially when it asks for respect for interim measures in inter-state proceedings without being able to rely on a clear legal foundation.¹⁵⁴

The Court may continue to exact harsh punishments that create precedent for future cases, but if the Contracting Parties do not cooperate with the Court, the Court may lose its credibility.

The Court has had much greater success in getting nations that violate the Convention to pay fines than in getting them to enact legislation to fix the problem.¹⁵⁵ This is certainly the case, as Cyprus has complained, in the case of missing persons.¹⁵⁶ In an article published by the Chatham House, various legal scholars note:

The ECHR is experienced in dealing with cases of forced disappearances. However, it may be said that the court has yet to show progress in ordering a state to carry out effective investigations which would offer, in part, redress to victims. The dissenting and concurring

¹⁵² *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. at 27 (¶ 7) (Albuquerque, J., concurring).

¹⁵³ Risini, *supra* note 113.

¹⁵⁴ *Id.*

¹⁵⁵ See Allison, *supra* note 144, at 5.

¹⁵⁶ See *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. at 20.

opinions in *Medova v. Russia* and *Varnava v. Turkey* raise this point.¹⁵⁷

It is the Court's job to make decisions on the merits of a case, but it has always been the Committee of Minister's job to monitor "the execution of judgments, particularly to ensure payment of the amounts awarded by the Court to the applicants in compensation for the damage they have sustained."¹⁵⁸ The Court seems to be taking a more active role in deciding how they want the case to be taken care of. The Court demonstrated its activism by issuing a timeline (three months) for Turkey to make the payments to Cyprus.¹⁵⁹ Some judges showed concern about the Court's apparent overstepping of its role.¹⁶⁰ Cyprus asked for a declaratory judgment to be made against Turkey for Turkey's lack of response to the initial judgment.¹⁶¹ The Court granted the declaratory judgment but rightfully responded that it was the Committee of Minister's job to "ensure that this holding which is binding in accordance with the Convention, and which has not yet been complied with, is given full effect by the respondent Government."¹⁶²

The Court, however, did not stop there. Joined by Judge Krakaş, four judges concurred in part in the judgment claiming that the final sentence of Paragraph 63¹⁶³ made by the Court "extend[s] the powers of the Court and runs counter to Article 46 § 2 of the Convention by encroaching on the powers of the Committee of Ministers of the Council of Europe, to which the Convention has entrusted the task of supervising execution of the Court's judgments."¹⁶⁴

The four judges said that the "Court does not have jurisdiction to verify whether a Contracting Party has complied with the obligations imposed on it by one of the Court's judgments."¹⁶⁵ By allowing Cyprus to circumvent the Committee of Ministers and refer a matter to the Court, the Court has potentially created an "imbalance in the distribution of powers between the two institutions that was envisaged by the authors of the Convention."¹⁶⁶

¹⁵⁷ See Allison, *supra* note 144.

¹⁵⁸ *The ECHR in 50 Questions*, *supra* note 81, at 9 (¶ 38).

¹⁵⁹ See *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. at 20, (¶ 4(b)).

¹⁶⁰ See *id.* (Tulkens, Vajić, Raimondi, and Bianku, joined by Karakaş, J., partly concurring).

¹⁶¹ *Id.* at 19 (¶ 61).

¹⁶² *Id.* at 2 (¶ 63).

¹⁶³ *Id.* ("Furthermore the Court's decision in the case of Demopoulos and Others, cited above, to the effect that cases presented by individuals concerning violation of property complaints were to be rejected for non-exhaustion of domestic remedies, cannot be considered, on its own, to dispose of the question of Turkey's compliance with section III of the operative provisions of the principal judgment in the inter-State case.")

¹⁶⁴ *Id.* at 27 (¶ 6) (Tulkens, Vajić, Raimondi, and Bianku, joined by Karakaş, J., partly concurring).

¹⁶⁵ *Id.* (¶ 7).

¹⁶⁶ *Id.* at 28 (¶ 9).

In his concurring opinion, Judge Albuquerque hailed the Court's right to make this declaratory judgment despite the fact that the application was decided in 2001 and the foreseeing of the execution of the judgment passed to the Committee of Ministers.¹⁶⁷ He particularly relied on Article 41.¹⁶⁸ He then distinguished the difference between the duty that a Member State has to prevent and abstain from violations of the Convention, and the fine of compensation that is put forth as a remedy.¹⁶⁹ He maintained:

Were it otherwise, the European human rights protection system would be flawed, because States could commit violations with impunity so long as they provided compensation to the victims of the violations after having committed unlawful acts. As the Commission stated in a number of cases, "the State [cannot] escape from its obligations merely by paying compensation."¹⁷⁰

Assuming that the Court did infringe on the Committee of Minister's duties by granting a declaration, and that the awarding of just satisfaction claims is a punitive weapon that the Court plans to arm itself with for future use, what are the implications? One could argue that the ultimate goal of the Convention is to keep Contracting Parties from committing human rights violations and then to give those who have been victimized a course of redress. In a situation where the Court finds that a violation of the Convention has taken place, the pressure (as stated in Article 30 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001))¹⁷¹ is for cessation of the act causing the harm and for assurance that legislation will be enacted so it will not happen again.

The Court is unlikely to forgive Member States who have not enacted the general measures necessary to rectify the violations committed and to prevent such violations from recurring. Furthermore, the Court will not forget those Member States who choose not to comply,

¹⁶⁷ *Id.* at 38 (¶ 21) (Albuquerque, J., concurring).

¹⁶⁸ *See id.* ("As a matter of principle, any State entitled to invoke responsibility may claim from the responsible State the cessation of the internationally wrongful act. Thus, the claimant State may request, under Article 41 of the Convention, a declaratory judgment stating that an ongoing violation must cease, especially but not exclusively when the ongoing violation of human rights infringes judgments of the Court which are already *res judicata*. Just satisfaction is then provided by way of appropriate declaratory relief to clarify the effects of the Court's judgments in the light of a continuing unlawful practice.")

¹⁶⁹ *See id.*

¹⁷⁰ *Id.*

¹⁷¹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, *supra* note 86, at 43 (Article 30: "The State responsible for the internationally wrongful act is under an obligation: (a) to cease that act, if it is continuing; (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.")

as just satisfaction claims are not time-barred and the Court has a long memory.

IV. TURKEY'S RESPONSE TO THE JUDGMENT

Turkey is likely reeling from this groundbreaking decision. Turkey's response to the judgment has the potential to profoundly impact its foreign relations with respect to its newly resumed peace talks with Cyprus and to its application to join the European Union. Because of this largely unresolved conflict between Greek- and Turkish-Cypriots, representatives of both factions are intermittently involved in negotiations to reach an amicable solution.¹⁷² The attitude that Turkey adopts towards the just satisfaction judgment will strongly affect how its efforts at meeting a resolution are perceived. Turkey is also currently expressing interest in joining the European Union. Turkey's behavior toward its responsibility and commitment to its current membership in the European Court of Human Rights rulings can have a large impact on whether the European Union perceives Turkey as a suitable candidate.¹⁷³ The outstanding question, however, is whether or not Turkey's response to the judgment diminishes the impact that the Court was trying to create.

A. Turkey's Intent to Ignore the Ruling

Where Turkey does not recognize the Republic of Cyprus as a legitimate governmental entity and instead it recognizes the TRNC as the legitimate government, Turkey has argued throughout all cases brought by Cyprus before the European Court of Human Rights in relation to this incident that Cyprus does not have standing to refer claims to the Court.¹⁷⁴

Following the judgment, various news agencies quoted the Turkish Foreign Minister Ahmet Davutoglu as saying, "In terms of the grounds of this ruling, its methods and the fact that it is considering a country that Turkey does not recognise as a counterpart, we don't see it as binding and we see no need to make the payment."¹⁷⁵ Davutoglu went on to argue that not only had the Court exceeded its authority, but also that the timing of the decision was "meaningful" and "unfortunate."¹⁷⁶ The Turkish and Cypriot governments had just commenced much anticipated

¹⁷² Ceren Mutuş Toprakseven, *The analysis of Cyprus v. Turkey Just Satisfaction Judgment and its Implications*, TURKISH WKLY (May 22, 2014), <http://www.turkishweekly.net/op-ed/3190/the-analysis-of-cyprus-v-turkey-just-satisfaction-judgment-and-its-implications.html>.

¹⁷³ See Christie-Miller, *supra* note 14.

¹⁷⁴ See *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. at 20.

¹⁷⁵ Toprakseven, *supra* note 172. See also Christie-Miller, *supra* note 14.

¹⁷⁶ Toprakseven, *supra* note 172.

negotiations about how to peacefully settle this long-standing conflict and now Turkey fears that this will give the Cypriot government undue leverage in the negotiations that may bring to a halt any progress that may have been made.¹⁷⁷

Turkey's blatant denial of any need to pay the just satisfaction seems rather daring. Turkey has paid damages in the past,¹⁷⁸ but has a history of only partial compliance with judgments coming from the Court.¹⁷⁹ However, it would be surprising for Turkey to fully dismiss the ruling, as States rarely completely ignore a ruling but can be prone to partial compliance.¹⁸⁰

B. Potential Consequences of not Following the Ruling

While some would argue that there are no realistic consequences for not complying with the judgments handed down by the Grand Chamber (as there has been an epidemic of States only partially complying with judgments),¹⁸¹ the Court gave Turkey a time limit of three months to pay Cyprus the €90,000,000.¹⁸² If Turkey did not pay, it would be charged interest.¹⁸³ Upon further insubordination "legal experts said the country could theoretically have non-sovereign, commercial assets abroad seized to pay the damages."¹⁸⁴ When discussing the ramifications for Turkey's refusal to abide by the ruling, reporter Ceren Mutus Toprakseven of the Turkish Weekly, reported:

[T]here is now an ECHR decision which is undisputedly binding on Turkey under international law If Turkey resists paying the compensation within the three months allotted, interest will be added to the amount at first. Further rejection of payment may result in the Committee of Ministers' placement of consistent pressure on Turkey through the adoption of interim resolutions (Rule 16) like in the case of *Loizidou v. Turkey*, and it may even lead to the application of Article 8 of the Statute of the Council of Europe, which envisages the suspension of the right of representation and exclusion from the Council of Europe. Although in

¹⁷⁷ *Id.*

¹⁷⁸ Borger, *supra* note 151.

¹⁷⁹ Darren Hawkins & Wade Jacoby, *Partial Compliance: A Comparison of the European and Inter-American Courts of Human Rights*, 6 J. INT'L L. & INT'L REL. 35, 69–71 (2010–11) ("[N]on-EU members such as Turkey, Russia, Ukraine, and Moldova clearly have a number of outstanding human rights issues." View figures 11 and 12, showing the substantial percentage of cases still pending in relation to Turkey, especially considering their late membership to the ECHR.).

¹⁸⁰ *Id.* at 55–56. See also Christie-Miller, *supra* note 14.

¹⁸¹ See Hawkins & Jacoby, *supra* note 179, at 69–71.

¹⁸² See *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. at 20 (¶ 5(b)).

¹⁸³ *Id.*

¹⁸⁴ Borger, *supra* note 151.

reality, the second measure has never been used, the Committee of Ministers officially brandished the threat of exclusion for the first time in *Loizidou* case. Obviously, it would not be desirable for Turkey, as one of the founding members of the Council of Europe and an EU candidate, to confront the European community and its values.”¹⁸⁵

But Turkey may already be feeling isolated as its bid to join the European Union has not been met with success.¹⁸⁶ With a political climate of isolation,¹⁸⁷ one might wonder, how much Turkey is willing to pay to keep Europe’s favor? Turkey was sentenced to pay over €33,000,000 for violations committed and brought before the European Court of Human Rights in 567 cases between the years of 1990 (when Turkey first submitted to having individuals cases brought against it in the European Court of Human Rights) and 2006.¹⁸⁸ This sum, though great, is a mere third of what this one just satisfaction judgment cost Turkey.

While €90,000,000 is ostensibly the largest sum awarded in any one just satisfaction case, it appears that the individual relatives of the missing people will each be receiving around €20,000, which is not that much more than the €12,000 per individual award that the Court awarded in the *Varnava and Others* case.¹⁸⁹ “Against the background of the costs of the continued military presence of 30,000 Turkish troops in Cyprus, the award is also not excessive.”¹⁹⁰

Regardless of the amount of money that the individual Greek-Cypriots will receive (if they receive anything at all) the purpose of the judgment was to show Turkey the high costs of illegal occupation and of ignoring the Court’s decisions.

V. CONCLUSION

This judgment is the Court’s testament to two important facts: 1) just satisfaction claims are not time-barred and can be applied to inter-State applications; and 2) the Court will not tolerate aggression or occupation. The effects of occupation are long-standing and far-reaching and the Court is doing its best to curb Contracting Parties’ partial compliance with judgments through large punitive damages.

¹⁸⁵ Toprakseven, *supra* note 172. See also *Loizidou v. Turkey*, 310 Eur. Ct. H.R. (ser. A).

¹⁸⁶ Ian Traynor, *Turkey’s EU membership bid falters as diplomatic row with Germany deepens*, THE GUARDIAN (Jun. 21, 2013), <http://www.theguardian.com/world/2013/jun/21/turkey-eu-membership-falters-row-germany>. See also Mark Lowen, *supra* note 15.

¹⁸⁷ Mark Lowen, *supra* note 15.

¹⁸⁸ *JITEM’s illegal actions cost Turkey a fortune*, *supra* note 94.

¹⁸⁹ Risini, *supra* note 113.

¹⁹⁰ *Id.*

The actual impact of this new precedent is yet to be seen. If it was the Court's intention to pressure Turkey into taking general measures to prevent human rights violations from occurring in the first place, or from continuing in the second place, then Turkey may be feeling the pressure. However, Turkey has yet to make an observable response to the Court's actions. In its 2009 annual report, the Committee of Ministers found that "the issue of slowness and negligence in execution has attracted special attention."¹⁹¹ Nations, Turkey included, have been slow to take general measures to abide by the Court's judgments.¹⁹² While it is rare for a State to refuse to pay just satisfaction, State "foot-dragging on general measures" is more common.¹⁹³ While declaratory judgments and fines were partially ignored in the past, and while they may continue to be ignored in the future, the intent of the Court, as shown through the concurring opinion of various judges, is to punish those errant nations who simply pay fines but do not change their ways. It may be too soon to tell if this will be the tipping point to force Turkey's hand and a deterrent for other nations bent on occupation. As some members of the Court noted, "the Court has spoken: it remains for it to be heard."¹⁹⁴

¹⁹¹ Committee of Ministers of the Council of Europe, *Supervision of the Execution of Judgments, Third Annual Report 2009*, 11 (2010), available at http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2009_en.pdf.

¹⁹² Hawkins & Jacoby, *supra* note 179, at 80.

¹⁹³ *Id.*

¹⁹⁴ *Cyprus v. Turkey (Just Satisfaction)*, Eur. Ct. H.R. at 23 (Zupančič, Gyulumyan, Björgvinsson, Nicolaou, Sajó, Trajkovska, Power-Forde, Vučinić and Albuquerque, J., joint concurring).