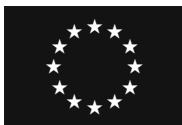


# EUROPEAN PARLIAMENT

2004



2009

*Committee on Petitions*

12.07.2005

## NOTICE TO MEMBERS

**Petition 305/1994 by Mrs Elpida Frangopoulou (Turkish), on forwarded by Mr A. ALAVANOS, MEP, on rights of succession of Greek citizens to property in Istanbul and violation by Turkey of human rights and the rights of minorities**

### 1. Summary of petition

The petitioner, a lawyer, who is permanently resident in Istanbul, has for 30 years been representing Greek citizens from Turkey and Turkish citizens of Greek origin concerning their property rights in Istanbul. The petitioner points out that, concerning matters relating to financial interests of European Union citizens in third countries (Turkey) which are associated with the Union, in practice all legal channels have been exhausted and property rights and the fundamental right of deceased persons to have their wishes respected concerning succession are still being violated. The petition maintains that this constitutes an infringement of the EEC-Turkey Association Agreement (1963), of which Article 9 categorically prohibits discrimination based on nationality. The petitioner gives the following account of events: In 1964, the Turkish cabinet, prompted by developments in Cyprus, issued a secret decree (6/3801) on the property of all ethnic Greeks in Turkey independently of their citizenship, of whom tens of thousands were leaving Turkey because of the strained relations between Greece and Turkey. This secret decree (thus designated since it was not published in the Turkish official gazette, where its constitutionality could be questioned) has frozen all de facto rights to property in Turkey belonging to ethnic Greeks (conveyance, annuity, inheritance) with the result that such property devolves to the Turkish Government. According to the petitioner, the value of property disposed of in this way amounts to hundreds of millions of dollars. With the resumption of activities by the EEC-Turkey Association Council, this secret decree became the subject of discussion. At the 1988 meeting between the Greek and Turkish Prime Ministers it was agreed that the measure would be revoked and Turkey proceeded to adopt the necessary special legal provisions with retroactive effect. According to the petitioner however, despite this, Turkish courts are continuing to enforce in full the 1964 secret decree, totally ignoring its revocation, as reflected in the numerous legal proceedings, the most recent of which was the Magdelini Kallinoglou Case, summarized by the petitioner as follows: as in all previous cases involving the property belonging to Greeks, the Turkish Government initiated legal proceedings opposing the inheritance of property by

Magdelini Kallinoglou. In 1988 and 1991, the Istanbul court found against the Government. However, both judgments were subsequently overturned by the Istanbul Appeal Court, with the Turkish Government invoking the secret decree of 1964. In accordance with Turkish law, the case was referred back to the lower court for a retrial. In 1993, the Peran (Istanbul) district court then ruled in favour of the Turkish Government against the inheritance on the grounds that the principle of reciprocity had not been respected.

In connection with the above, the petitioner indicates that:

(a) the principle of reciprocity in connection with minorities is, in practice, a discriminating measure condemned by international texts on the human rights of minorities and (b) the secret decree of 1964 has to all intents and purposes, been reinstated, thereby infringing Article 9 of the EEC-Turkey Association Agreement. The petitioner points out that firstly, this decree is based on the Turkish Law of 1927 on retaliatory measures, which runs counter to the principles of the UN Charter and the European Convention on Human Rights. Secondly, the demand that this decree be definitively abrogated relates only to the retroactive return of property and the reinstatement of rights of inheritance of Greek nationals to property in Istanbul of which they still retain ownership. Thirdly, under the Turkish system based on the secret decree in question which has been applied since 1979 and is resulting in the progressive confiscation of property and inheritances, property and inherited property in large areas of Turkey belonging to Greek nationals may be definitively confiscated. According to the petitioner, Greek subjects who were deported or forced to leave Istanbul and the very few who still remain there should be given the opportunity, without discrimination, to exercise all civil rights which were suspended in 1964 and should be awarded compensation for their losses. Finally, the petitioner calls on the European Union to take measures to protect the rights of Union citizens to claim their property and to restore the natural right of inheritance of all European citizens irrespective of their place of residence.

## **2. Admissibility**

The petition was declared admissible at the meeting of 21 and 22 June 1994, and the Commission was asked to provide information pursuant to Rule 157(3) of the Rules of Procedure.

## **3. Commission reply, received on 12 January 1995.**

The Commission confirms to the petitioner that according to the information available the decree issued by the Turkish Government in 1964 was abrogated by the decree of 3 February 1988, with retroactive effect. This implies that in Turkey the rights of all non-Turkish citizens including Greek citizens are treated alike, i.e. according to the criterion of reciprocity. On the other hand, the rights of Turkish citizens of Green origin are identical with those of all other Turkish citizens and such a situation has therefore to be assessed under Turkish law.

The Commission understands from the petitioner that according to the provisions laid down in the Constitution of the Republic of Turkey the civil courts are independent of the Government and the Executive and it is the Constitution itself that determines their jurisdiction in handling such cases.

As to the particular case mentioned by the petitioner, the Commission will try to obtain additional information on the issue, including what is the Turkish Government position with regard to the judgment delivered on this case by the Turkish court last December.

Moreover, as a member of the Council of Europe, Turkey has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and the Additional Protocol of 1952, Article 1 of which says that 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions' and that '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'.

As Turkey has accepted the appeal procedures laid down in the Convention, Mrs Frangopoulou may address the Commission on Human Rights if she considers, after exhausting internal appeal procedures, that her rights, thus guaranteed, have been violated.

**4. Further reply from the Commission,** received on 5 March 1996

The Turkish authorities have been asked for further information through the Commission Representation in Ankara.

The authorities refer to the principle of the separation of powers which is enshrined in the Turkish constitution, and therefore consider that it is not for them to intervene in the judgments of Turkish courts.

The information received by the Commission Representation in Ankara from non-governmental sources appears to confirm that there are problems when it comes to applying the law.

The Commission intends to make every effort to ensure that this point is brought up at the next EC-Turkey Association Council meeting.

**5. Further reply from the Commission,** received on 26 July 1996

The EC-Turkey Association Council has not met since the meeting of the Committee on Petitions of 23 April, as the political conditions have not been right. No date has been set by the Presidency for the next meeting of the Association Council and the agenda for that meeting has accordingly not yet been drawn up.

**6. Further reply from the Commission,** received on 12 July 2005

The Commission is aware that Greek citizens have encountered problems in relation to their inheritance rights in Turkey. The Commission has requested information from the Turkish authorities regarding the legislative framework in this area on a number of occasions. Most recently, the Commission requested this during its regular political dialogue with the Turkish authorities on 18 March 2005. To date the Turkish authorities have not provided a response.

The Commission was recently informed of a case before the European Court of Human Rights regarding this issue (Ioannis Fokas and Evangelos Fokas v. Turkey, Application no.

31206/02). The Commission will closely follow this and any other such cases of which it is made aware. The plaintiffs' allegation that Greek citizens have been denied their inheritance rights in Istanbul on the basis of a "secret decree" which dates back to the 1960s is of particular concern. The Commission intends to further investigate this issue in the context of its monitoring of the human rights situation in Turkey and will continue to raise the issue with the Turkish authorities.