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**Remedy for Unjust Wars in Europe:
The Cyprus v. Turkey Just Satisfaction Case**

*Dr. Maria Pichou**

1. INTRODUCTION

The European Court of Human Rights (ECtHR) is the longest standing international human rights court. Since its establishment in 1959, it has delivered about 18,000 judgments.¹ The court's case law on applications lodged by individuals against member states to the European Convention on Human Rights (ECHR) abounds and much has been written on its role in promoting the protection of human rights in Europe and establishing a European public order. Interstate cases however, are by comparison scarce. Only five judgments have been delivered by the Court so far.² Two of them were delivered on the *Cyprus v. Turkey (IV)* case, the first in 2001 and the second in 2014 (*Just Satisfaction* case). The latter is considered to represent the most crucial contribution to European peace in the history of the court, as highlighted by the two concurring judges.

This review analyses whether this superlative is apt. The *Cyprus v. Turkey (IV) just satisfaction* case is of particular importance for a number of reasons. It is the first time that the ECtHR awarded just satisfaction in an inter-state case. Second, it is the first time that the ECtHR accepted satisfaction claims in an inter-state dispute that was fuelled by the military invasion and occupation of one member state by another. Third, the ECtHR advanced an analytical distinction of interstate cases in order to assess just satisfaction claims. Finally, by drawing from international law sources, the ECtHR developed the admissibility criteria for assessing the passage of time for such just satisfaction claims.

The analysis focuses on the following two issues: a) the nature of just satisfaction claims and the criteria established by the ECtHR for the application of Article 41 to interstate disputes; and b) the assessment of time-limits for just satisfaction claims especially in cases where the execution of a judgment is slow and the Committee of Ministers' political and diplomatic pressure is not fruitful. It engages with

* Postdoctoral Researcher in International Law, Faculty of Law, University of Luxembourg.

¹ Public Relations Unit of the Court, "Overview 1959–2014", European Court of Human Rights. http://www.echr.coe.int/Documents/Overview_19592014_ENG.pdf

² The court delivered judgments in the following cases: *Ireland v. the United Kingdom*, Application No. 5310/71, *Cyprus v. Turkey IV*, Application No. 25781/94, *Denmark v. Turkey*, Application No. 34382/97, *Georgia v. Russian Federation I*, Application No.13255/07.

these issues by reviewing the *Cyprus v. Turkey (IV) just satisfaction* case of May 2014. It begins with a brief overview of the procedure and of the events that triggered this legal dispute and it concludes with some thoughts on the political repercussions of this judgement. Two main questions underlie the analysis: a) whether the ECtHR position is affected by the particular historical context and b) whether this case does contribute to the development of human rights law in Europe.

2. POLITICAL CONTEXT

Cyprus became a British Crown colony in 1925.³ Before the First World War, the Greek Cypriots, who constituted about 80% of the population, put forward a demand for union with Greece. This movement provoked the British Administration and caused serious disturbances in Cyprus. After World War II, the Greek Cypriots under the leadership of Makarios repeated the demand for union with Greece. The Turkish Cypriots, who constituted about 18% of the population back then, rejected this demand and proposed either a continuation of British rule or the partition of the island. In 1955 at the London Conference the Foreign Ministers of Greece, Turkey and the United Kingdom failed to produce a solution for the ongoing hostilities in the island. At the same time, the Cyprus issue was placed on the agenda of the United Nations General Assembly as a question of self-determination. The political pressure to create an independent state eventually led to the Zurich Conference in 1959, where the leaders of the Greek and Turkish Cypriot communities accepted an agreement on forming an independent Cyprus. By virtue of the same international treaty, Greece, Turkey and the United Kingdom were recognised as guarantor powers.

Throughout the 1960's outbreaks of intercommunal violence were frequent. The state ceased to function on a bi-communal basis and a United Nations Peacekeeping Force was deployed at the island. On 15 July 1974 the Military Regime in Greece supported an unsuccessful coup d'état in Cyprus while the democratically elected President Makarios had to leave the island on 16 July. Four days later Turkey invaded the island and occupied a sizeable area in the northern part. As a result of the crisis and the Turkish invasion, the Greek Junta fell. Although a ceasefire was reached by the end of July 1974, in August the Turkish armed forces continued their advance in Cyprus and occupied the northern part of the island. The second Turkish invasion provoked the strongest international reaction, and the Security Council took several resolutions, condemning Turkey's military operations in Cyprus.

The "Turkish Republic of Northern Cyprus" ("TRNC") was established in November 1983, a major development in the continuing division of Cyprus, which was subsequently condemned by the international community.⁴ The same month, the Committee of Ministers of the Council of Europe recognised the government of

³ This historical overview is based on the description of facts set out in the 1976 European Commission of Human Rights' Report, 10 July 1976, Chapter 1, p. 4-9.

⁴ See the United Nations Security Council Resolutions 541 (1983) and 550 (1984), which declared the proclamation of the establishment of the "TRNC" legally invalid and calling upon all States not to recognise any Cypriot State other than the Republic of Cyprus.

just satisfaction case of May and of the events that triggered the analysis: a) whether in the historical context and b) whether under human rights law in Europe.

³ Before the First World War, the population, put forward a demand for union with the British Administration. After World War II, the Greek demand for union with the United Kingdom was placed on the Cyprus issue. The continuation of British rule or the independence of the island eventually led to the Zetouni and Turkish Cypriot independent Cyprus. By virtue of the United Kingdom were

communal violence were frequent. On this basis and a United Nations Security Council Resolution of 15 July 1974 the Military Regime in Cyprus while the demarcation line on 16 July. Four days later the Greek Junta fell. Although a military force the Turkish armed forces occupied the northern part of the island. The international reaction, and the Secretary-General's military operations

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of the Republic of Cyprus as the sole legitimate government and called for respect of the sovereignty, independence, territorial integrity and unity of it.

Regarding the procedure in Strasbourg, the Turkish military operations in northern Cyprus of July and August 1974, the continuing division of its territory and the "TRNC"'s activities gave rise to four applications filed by Cyprus against Turkey before the European Commission of Human Rights (Commission) and the ECtHR. The first two applications were joined by the Commission, which concluded that Turkey had indeed violated the Convention, by committing the following acts: a) by refusing to "allow the return of more than 170,000 Greek Cypriot refugees to their homes in the north of Cyprus", b) by the eviction of Greek Cypriots from their houses, c) by their "transportation to other places within the north of Cyprus, or by their deportation across the demarcation line", d) by "the separation of Greek Cypriot families", e) "by the confinement of more than two thousand Greek Cypriots to detention centres", f) by the detention of Greek Cypriot military personnel and civilians, g) by killing civilians, h) by their inhuman treatment by Turkish soldiers, and i) by "the deprivation of possessions of Greek Cypriots on a large scale".⁵ As the Commission concluded in 1976:

The Cyprus problem has many facets and elements international and national, political, social, psychological, economic, humanitarian. Therefore the problem of human rights protection raised by the present applications is only one element amongst a complexity of elements.⁶

In 1983, the Commission published its Report on Cyprus' third application against Turkey. The Commission found that Turkey had failed to account for the fate of the Greek Cypriots who were still missing, had continued to refuse to allow Greek Cypriots to return to their homes and to their families in the north, had continued to deprive the Greek Cypriots of their property, and thus, had continued to violate the Convention.⁷

The fourth application of Cyprus against Turkey was the first to be referred to the ECtHR. In May 2001, the Grand Chamber delivered its judgment and found, in total, fourteen violations of the Convention in relation to the situation in the northern part of Cyprus since the military intervention by Turkey in 1974.⁸ Four broad categories of violations were identified regarding the Greek-Cypriot missing persons and their relatives, the property rights of displaced persons, the living conditions of the Greek Cypriots in northern Cyprus and the situation of Turkish Cypriots and the Gypsy community in northern Cyprus.⁹ Interestingly, the ECtHR held unanimously that the issues of awarding just satisfaction to Cyprus and the possible

⁵ Report of the European Commission of Human Rights (Applications No. 6780/74 and 6950/75), 10 July 1976, vol. 1, p. 163-167.

⁶ Report of the European Commission of Human Rights of 10 July 1976, Chapter 1, p. 9.

⁷ Report of the European Commission of Human Rights (Application No 8007/77), 4 October 1983, p. 47-48.

⁸ Interim Resolution ResDH(2005) 44 concerning the judgment of the European Court of Human Rights of 10 May 2001 in the case of Cyprus against Turkey (Adopted by the Committee of Ministers on 7 June 2005, at the 928th meeting of the Ministers' Deputies.

⁹ ECtHR Judgment (Application No. 25781/94), 10 May 2001.

application of Article 41 of the Convention were not ready for adjudication, and it subsequently adjourned their consideration. The Committee of Ministers of the Council of Europe has regularly examined the execution of this judgment by Turkey since June 2001.

Finally in 2007, Cyprus declared its intention to pursue just satisfaction claims with respect to the remaining violations of the Convention by Turkey and filed the relevant application in 2010. In May 2014, forty year after Turkey's invasion in Cyprus, the Grand Chamber ruled that Turkey had to pay 30.000.000 Euros as non-pecuniary damage suffered by the relatives of the missing persons and 60.000.000 Euros as non-pecuniary damage suffered by the enclaved Greek Cypriot residents of the Karpas peninsula.¹⁰ A detailed examination over the execution of this judgment is scheduled to take place at the 1236th and 1243rd meetings of the Committee of Ministers of the Council of Europe this year.¹¹

3. REPARATION AT THE STRASBOURG COURT: THE NATURE OF JUST SATISFACTION CLAIMS IN INTERSTATE DISPUTES

The *Cyprus v. Turkey (IV) just satisfaction* case offered a historic opportunity for the ECtHR to take a legal stand on the nature of just satisfaction claims in interstate cases. Until May 2014, all awards of just satisfaction made by the ECtHR were related to individual applications and have been granted directly to individuals. The *Cyprus v. Turkey (IV) just satisfaction* is the first interstate case where the ECtHR held that just satisfaction may be paid to individuals through the claimant/injured state by the state that had violated the Convention.¹²

The award of just satisfaction is not a *sine qua non* consequence of a violation of the Convention found by the court. Article 41 of the Convention lays down the conditions under which the ECtHR may afford just satisfaction.

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.

According to the wording of the provision, two conditions need to be met. A violation of the Convention or of the Protocols thereto needs to be ascertained by the ECtHR and the domestic laws do not allow full reparation to be made. Even when these conditions are met, the ECtHR, shall only if necessary, afford just satisfaction to the injured party.

Regarding an interstate case, the key terms of this provision are "the injured party". The issue of whether a party refers only to an individual/victim of a violation or whether it encompasses a member state arose before, and was answered by, the ECtHR. The court reiterated its commitment to interpret article 41 in the light

¹⁰ ECtHR Judgment (Application No. 25781/94), 12 May 2014.

¹¹ Cases already listed for detailed examination at future DH meetings by earlier decisions of the Committee, 1236th meeting (22–24 September 2015) (DH) and 1243rd meeting (8–10 December 2015) (DH).

¹² In the *Ireland v. the United Kingdom* case (, 5310/71), the applicant state declined to submit a claim for just satisfaction when asked about it by the Court.

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of international law principles relating to state responsibility and held that the pay-
ment of just satisfaction is a fundamental rule of the law of State responsibility. It
was, therefore, established that the term "party" in Article 41 refers to the party to
the proceedings before the ECtHR, be it state or individual.

The right to reparation is a well-established principle of international law - the
most important principle according to the ECtHR. The principle stipulates that the
state that violates an international obligation is responsible to pay reparation to the
injured state. According to the UN General Assembly's Basic Principles and
Guidelines on the Right to a Remedy and Reparation for Victims of Violations of
International Human Rights and Humanitarian law (UN General Assembly Guiding
Principles), full and effective reparation should be provided to victims of gross viola-
tions of international human rights law and of serious violations of humanitarian
law.¹³ Reparation includes the following forms: restitution, compensation, rehabili-
tation, satisfaction and guarantees of non-repetition.

Reparation is not synonymous with compensation or satisfaction, the two lat-
ter being only specific forms of reparation. Other forms of reparation include resti-
tution, rehabilitation and guarantees of non-repetition. While compensation is pro-
vided for any economically assessable damage, satisfaction should include, *inter*
alia, the adoption of effective measures aimed at the cessation of continuing viola-
tions, the search for the whereabouts of the disappeared, an official declaration or a
judicial decision restoring the truth or a public apology. When applying Article 41
of the Convention however, the ECtHR did not draw a distinction between the two
different forms of reparation, as stipulated in the UN General Assembly Guiding
Principles. The Court accepted that just satisfaction under Article 41 may take the
form of monetary compensation for damage suffered.¹⁴ The ECtHR, thus, did not
follow the distinction provided by the general international law on reparation and
considered that just satisfaction is compensation. Therefore, in the ECtHR's view,
the nature of just satisfaction is not synonymous with the satisfaction as a form of
reparation under general international law, but it rather is more comparable to the
notion of reparation.¹⁵

There is a considerable analysis on the nature of just satisfaction in interstate
cases in Judge's Pinto De Albuquerque's concurring opinion, which is quite differ-
ent from the one adopted by the majority of the judges. According to the opinion,
there is a distinction between the compensatory and the punitive nature of a satis-
faction award. Seven different types of punitive damages awarded by the ECtHR
are identified there: a) the ECtHR awards satisfaction without any relevant claim
filed by the applicant state, b) when the applicant files a claim for just satisfaction

¹³ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims
of Violations of International Human Rights and Humanitarian law, adopted by the UN
GA Resolution 60/147 of 16 December 2005.

¹⁴ Philip Leach, "The European Court's developing approach to remedies" in Andreas
Follesdal, Birgit Peters & Geir Ulfstein (eds.) *Constituting Europe: The European
Court of Human Rights in a National, European and Global Context* (1st Ed. 2013) p.
144.

¹⁵ See the analysis on just satisfaction versus full reparation in Octavian Ichim, *Just satis-
faction under the European Convention on Human Rights* (1st ed, 2015) p. 18-19.

without specifying the amount, c) the ECtHR awards compensation in an amount higher than the alleged damage, d) the ECtHR establishes a symbolic amount with the purpose to make an example for other states, e) the ECtHR awards just satisfaction even though the claimant state has not specified any personal specific damage but has complained only about an existing law, f) the ECtHR awards satisfaction for a potential violation of the Convention and g) the ECtHR awards compensation despite the lack of any evidence of the alleged damage. In all of these cases, the nature of just satisfaction is no longer compensatory but punitive, because the ECtHR seeks to punish the respondent state's wrongful conduct, and not to remedy a proven damage. In the specific case, the concurring judge considered that the nature of just satisfaction was punitive, as the ECtHR awarded money, without having identified the exact number of the missing persons.

After reviewing international practice (Inter-American Commission, the Council of Europe, EU law), the concurring judge suggested that just satisfaction may have the character of punitive or exemplary damages under the Convention in at least three cases: a) gross violations of human rights b) prolonged and deliberate non-compliance with a ECtHR's judgment and c) when a state restricts an individual's access to the ECtHR by violating or threatening to violate the applicant's human rights. The severity of these instances threatens the interests of all member states to the Convention, the Council of Europe and Europe as a whole. According to the judge's view, in the *Cyprus v. Turkey (IV) just satisfaction*, the first two conditions apply, rendering the nature of just satisfaction punitive. Not only did Turkey commit "a multitude of gross human rights violations over a significant period of time" but also failed to comply with the 2001 Grand Chamber's judgment.¹⁶

4. LEGAL CRITERIA FOR AWARDING JUST SATISFACTION IN INTERSTATE DISPUTES

Furthermore in the *Cyprus v. Turkey (IV) just satisfaction* case, the ECtHR established the legal criteria for awarding just satisfaction in interstate applications. Specifically, the ECtHR clarified that each case has to be assessed on an individual basis, according to an indicative list of considerations: the type of complaint by the applicant state, whether the victims of violations can be identified, and the goal that each complaint seeks to pursue. One fundamental element is crucial for awarding just satisfaction in interstate disputes: the victims are the individuals on whose behalf the state acts.

The ECtHR distinguished two broad categories of complaints filed in interstate disputes. The first category refers to cases where a state complains about general systemic problems in another state (such as administrative practices). In these cases, the applicant state's primary goal is to vindicate the public order in Europe, which is jeopardised by the violations of the Convention by the respondent state. That is why according to the ECtHR, just satisfaction may not be appropriate for this type of complaints. The second type of complaints concerns inter-state cases where the applicant state essentially acts on behalf of its nationals, who have been

¹⁶ Concurring Opinion of Judge Pinto de Albuquerque, joined by Judge Vučinić, *Cyprus v. Turkey (Just Satisfaction) IV*, 25781/94 p. 30.

compensation in an amount which is a symbolic amount with no real value. The ECtHR awards just satisfaction in many cases where the applicant has suffered personal specific damage. The ECtHR awards compensation for non-material damage. In all of these cases, the award is not purely punitive, because the aim is to remedy the wrongful conduct, and not to remedy the damage. The ECtHR judge considered that the ECtHR awarded money, without any real value.

The American Commission, the Inter-American Commission, suggested that just satisfaction should be awarded under the Convention in cases of prolonged and deliberate violations. When a state restricts an individual's freedom to violate the applicant's rights, it is against the interests of all member states of Europe as a whole. According to the ECtHR, just satisfaction is not purely punitive. Not only did the ECtHR award compensation for violations over a significant period, but the 2001 Grand Chamber's

JUST SATISFACTION IN

Just satisfaction case, the ECtHR has awarded just satisfaction in interstate applications. Just satisfaction should be assessed on an individual basis. The type of complaint by the applicant should be identified, and the goal that the applicant seeks is crucial for awarding just satisfaction to the individuals on whose behalf

complaints filed in interstate cases (e.g. administrative practices). In these cases, the public order in Europe, the Convention by the respondent state. The award may not be appropriate for cases where the complaint concerns inter-state cases of its nationals, who have been

joined by Judge Vučinić, *Cyprus*

injured by the respondent state's violations. For this type of complaints, satisfaction claims may be awarded, because they resemble to claims filed in the context of diplomatic protection and they are not that different from individual applications.

The ECtHR accepted the application of article 41 for this type of state disputes as long as the rest of the criteria are fulfilled and the specific circumstances of the case allow for it. Just satisfaction, therefore, is awarded to the state as compensation for violations not of its rights, but those of the individual victims who are clearly identified and represented by the applicant state. The exact number of individual victims however is not necessary for awarding just satisfaction to the applicant state and the ECtHR did not establish any criteria for the distribution of the monetary amounts by the applicant state to the victims.

5. PASSAGE OF TIME FOR INTERSTATE JUST SATISFACTION CLAIMS

Rule 60 of the Rules of Court specify the conditions for awarding just satisfaction, by stipulating that an applicant must make a specific claim to that effect, within the time-limit fixed by the ECtHR. The Court may reject the just satisfaction claims in whole or in part, if the applicant does not comply with these conditions.¹⁷

The events that gave rise to this dispute took place forty years before the judgment awarding just satisfaction to Cyprus, while the Court's principal judgment on the merits of the case was delivered in 2001. Although international law does not provide for a specific time-limit for filing an inter-state application, delay on the part of the applicant state may render an application inadmissible, especially when the delay causes prejudice to the respondent state. The ECtHR acknowledged that general international law recognises the obligation of an applicant state to act without undue delay in an inter-state dispute in order to uphold legal certainty and to avoid causing prejudice to the respondent state.¹⁸ Specifically, the ECtHR relied on this legal standard, which was also adopted by the International Court of Justice (ICJ) in the case of *Certain Phosphate Lands in Nauru*.¹⁹ The ECtHR found that this legal standard was not fulfilled in the *Cyprus v. Turkey (just satisfaction)* case for the following reasons. First, when Cyprus' application was filed in 1994 before

¹⁷ Rule 60: Rule 603 — Claims for just satisfaction

1. An applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of the Court finding a violation of his or her Convention rights must make a specific claim to that effect.
2. The applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant's observations on the merits unless the President of the Chamber directs otherwise.
3. If the applicant fails to comply with the requirements set out in the preceding paragraphs the Chamber may reject the claims in whole or in part.
4. The applicant's claims shall be transmitted to the respondent Contracting Party for comment. Rules of Court, Registry of the Court, Strasbourg, Practice Directions amended on 29 September 2014.

¹⁸ *Cyprus v. Turkey (Just Satisfaction) IV*, 25781/94 p.7.

¹⁹ *Nauru v. Australia*, Preliminary Objections, 1992 ICJ Rep. 240.

the European Commission of Human Rights, the Rules of Procedure of the Commission did not impose any obligation on the applicant (be it state or individual) to indicate whether or not they would pursue a just satisfaction claim in their application form. Second, it was the Court that requested Cyprus not to submit any claim for just satisfaction at the stage of adjudicating the merits of the case. Additionally, no time-limits for Cyprus' submitting just satisfaction claims were fixed by the Court after the 2001 principal judgment on the merits of the case.

Furthermore, the ECtHR found that no prejudice was caused to Turkey, because the latter could not legitimately expect that the issue of just satisfaction would be left unaddressed or nullified by the passage of time. In 2001, the ECtHR had adjourned the issue of just satisfaction, therefore implying that the examination of this issue may be more appropriate in the future. Moreover, unlike the ICJ *Certain Phosphate Lands in Nauru*, the delay did not occur before the filing of an inter-state application, but during the phase of the execution of the Court's principal judgment, which found Turkey responsible for several violations of the Convention. Therefore, Turkey's non-compliance with the ECtHR's principal judgment on the merits of the case and the subsequent inability of the Committee of Ministers to enforce the judgment did not remove Cyprus' right to seek just satisfaction. As pointed out by the joint concurring opinion, this judgment "heralds a new era" in the context of execution of the ECtHR's judgments and in enforcing human rights in Europe.²⁰

Interestingly, the ECtHR distinguished its role regarding the enforcement of human rights in Europe. The Court's role in finding violations of the Convention and awarding just satisfaction is different from the Committee of Ministers' role in supervising the execution of its judgments. The relation between these two organs of the Council of Europe shows the constant interplay of law and politics in this area. The ECtHR recognized the need to take into account the developments of the supervising proceedings before the Committee of Ministers when assessing the admissibility of a just satisfaction claim. This however, does not preclude the court from examining such a claim.

It is worth mentioning, that according to general international law and the UN General Assembly Principles, statutes of limitations do not apply to gross violations of international human rights law:

Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law

Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.²¹

²⁰ Joint Concurring Opinion of Judges Zupančič, Gyulumyan, David Thór Björgvinsson, Nicolaou, Sajó, Lazarova Trajkovska, Power-Forde, Vučinić and Pinto de Albuquerque, p.23.

²¹ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian law, adopted by the UN GA Resolution 60/147 of 16 December 2005.

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In the *Cyprus v. Turkey (just satisfaction)* case, the ECtHR did not expressly refer to this general principle and it only applied the standard adopted by the International Court of Justice on admissibility of claims due to the passage of time. The Court, thus, lost an opportunity to confirm that statutes of limitation do not exist for gross violations of human rights.

6. CONCLUDING REMARKS

In the *Cyprus v. Turkey (just satisfaction)* case, the ECtHR first accepted that just satisfaction under Article 41 of the Convention is applicable on inter-state disputes and it then established the criteria for its application. Although the Court's eagerness to adopt a harmonised approach to international law and to construe the Convention in the light of general international law is remarkable, the ECtHR failed to address the conceptual nuances between the different forms of reparation. It did though distinguish the state's obligation to take individual or general measures and the payment of just satisfaction as different forms of redress, which do not preclude one another.

Furthermore, the ECtHR reiterated that the provisions of the Convention cannot be interpreted and applied in a vacuum. 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. By referencing the ICJ case-law on the issue of time-limits for just satisfaction and by taking into account principles of general international law on the application of just satisfaction claims in inter-state disputes, the Court contributed to a more harmonised view of European human rights law and international law.

Interstate disputes before the ECtHR are *ipso facto* politically charged. Political considerations are more likely to play a role in interstate cases than in cases brought by individuals.²² Regarding the *Cyprus v. Turkey (IV) just satisfaction* judgment, it was a highly sensitive human rights case. The ECtHR had to take into consideration the established political situation in Cyprus. First, the political facts had an impact on the type of reparation awarded by the Court. The ECtHR has repeatedly confirmed that restitution is the type of reparation which should be awarded in case of violations of human rights by states, and only when the restitution is practically impossible, should other forms of reparation be employed by the ECtHR.²³ In the *Cyprus v. Turkey (IV) just satisfaction* case, the ECtHR's decided to award just satisfaction in the form of monetary compensation for non-pecuniary damage. Turkey's invasion of the island took place in 1974, and by favouring just

²² See on the role that the geopolitical issues play in the drafting of the ECHR and in the initial jurisprudence where the question of decolonisation directly and indirectly placed constraints on the practices of the Court: Mikael Rask Madsen, "The protracted Institutionalization of the Strasbourg Court: From Legal Diplomacy to Integrationist Jurisprudence" in Jonas Christoffersen & Mikael Rask Madsen, *The European Court of Human Rights between Law and Politics* (1st ed 2011), p. 56.

²³ *Papamichalopoulos v. Greece*, E.C.H.R. Series A330-8 pp.58-61, [34]-[40]. See also the judgments of the Euro-pean Court of Human Rights in the cases of *Brum Rescu v Romania (Just Satisfaction: Pecuniary Damages)* (2001), 33 E.H.R.R. 36; *Str in v Romania* (2008), 46 E.H.R.R. 11 at [80] and [81].

satisfaction in the form of monetary compensation over *restitutio in integrum*, the ECtHR seems to have taken into consideration the established situation in Cyprus.²⁴

The historical context of this judgment, the nature of the relation between the two states and between the two communities on the island made a difference both in the ECtHR's substantive judgment and in the type of reparation awarded. It is not a coincidence that this judgment was rendered amidst the war in Ukraine. On 13 March 2014, the Government of Ukraine lodged an inter-State application against the Russian Federation for alleged breaches of the Convention and submitted a request for an interim measure.²⁵ The application relates to "events leading up to and following the assumption of control by the Russian Federation over the Crimean peninsula and subsequent developments in Eastern Ukraine".²⁶ About two months later, the *Cyprus v. Turkey (IV) just satisfaction* case represents the novelty of a state being held responsible to pay just satisfaction in respect of non-pecuniary damage suffered by individual victims by Turkey's violation of the Convention, after having invaded the island. In their concurring opinions, the judges considered this judgement as the most important contribution to the promotion of peace and justice in Europe.²⁷

After all, there is punishment for unjust war and its tragic consequences in Europe.²⁸

It may be assumed that it was the judges' intention to send a clear message to all member states in Europe, both from the perspective of state responsibility and of the public order and the rule of law in Europe. Whether or not the Court will follow the same reasoning in inter-state cases where violations of the Convention have been identified as a result of military operations by one state member against another remains to be seen.

²⁴ See Loucaides' position that before the restitution is abandoned in favour of compensation, the Court should establish first that restitution is impossible. Loukis G. Loucaides, "Reparation for violations of human rights under the European Convention and restitution in integrum", *European Human Rights Law Review* 2008, 2, 182–192.

²⁵ *Ukraine v. Russia*, application no. 20958/14.

²⁶ Press Release ECHR 345 (2014) issued by the Registrar of the Court, 26.11.2014

²⁷ "The present judgment heralds a new era in the enforcement of human rights upheld by the Court and marks an important step in ensuring respect for the rule of law in Europe. It is the first time in the Court's history that the Court has made a specific judicial statement as to the import and effect of one of its judgments in the context of execution." Joint Concurring Opinion of Judges Zupančič, Gyulumyan, David Thór Björgvinsson, Nicolaou, Sajó, Lazarova Trajkovska, Power-Forde, Vučinić and Pinto de Albuquerque, *Cyprus v. Turkey (Just Satisfaction) IV*, 25781/94 p. 23.

²⁸ Concurring Opinion of Judge Pinto de Albuquerque, joined by Judge Vučinić, *Cyprus v. Turkey (Just Satisfaction) IV*, 25781/94 p. 41.