

**Takey Crist, Eugene T. Rossides and Daniel Rossides v. The Republic of Turkey and
The Army of the Republic of Turkey (C.A. 93-2605)**

MOTION TO DISMISS

Submitted by Saltzman & Evinch and Perles Law Firm

Historical Background¹

When the Republic of Cyprus was founded in 1960, it was a fully independent, bicomunal state in which the Greek Cypriot and Turkish Cypriot communities had the status of co-founders and equal partners. Turkish Cypriots comprised one fifth of the island nation's total population. They felt safe and looked forward to many years of peace and prosperity. The rights of both communities were secured by the Constitution of 1960.² Turkey, Greece and the United Kingdom ratified a Treaty of Guarantee³ which assured the independence of the new state, and a Treaty of Alliance between Turkey, Greece, and Cyprus provided for the island's security. The Republic of Cyprus was universally recognized and given a seat at the United Nations.

The Constitution of 1960 provided inter alia: both Turkish and Greek were to be the official languages; the executive branch would consist of a Greek Cypriot president and a Turkish Cypriot vice president; a Council of Ministers supporting the executive branch would consist of 10 members, 3 Turkish Cypriots and 7 Greek Cypriots; a Turkish Cypriot was to be given leadership over at least one of the key ministries -- defense, foreign affairs, or finance, and; the 50-seat House of Representatives would reserve 15 seats for Turkish Cypriots and 35 for Greek Cypriots. The House of Representatives was empowered to legislate over almost any matter by vote of a simple majority. Where legislation involved taxation, municipal affairs, and modifications of the electoral law, separate majorities of both the Greek Cypriot and Turkish Cypriot members were needed for passage.

The first president of the Republic of Cyprus, Archbishop Makarios III, unfortunately regarded the nation's independence as but a stepping stone toward enosis, the unification of Cyprus with Greece. The Greek flag flew over the Presidential Palace in Nicosia and on Makarios' official limousine.⁴ In a speech in his native village of Panayia on September 4, 1962, President Makarios ominously stated, "Unless this small Turkish community forming a part of the Turkish race which has been the terrible enemy of Hellenism is expelled, the duties of the heroes of EOKA can never be considered as terminated."⁵ EOKA was the Greek Cypriot guerrilla organization that had fought against British rule in the 1950's. EOKA was rearmed in the 1960's to bring about enosis in spite of the Treaty of Guarantee which explicitly stated in article II, "Greece,

¹ A detailed account, including eyewitness reports, of the events surrounding Turkey's intervention in Cyprus can be found in Pierre Oberling, *The Road to Bellapais*, (1982).

² Constitution of the Republic of Cyprus (1960); See Thomas & Thomas, *The Cyprus Crisis 1974-75: Political-Juridical Aspects*, 29 Sw. L.J. 513, 514 (1975).

³ 382 U.N.T.S. 4 No. 5475 (Aug. 16, 1960); See MacDonald, *International Law and the Conflict in Cyprus* 19 Can. Y.B. Int'l L. 3, 4 (1981).

⁴ Oberling, at 69.

⁵ Osman Örek, *Makarios on Enosis*, 22 (1974).

Turkey and the United Kingdom . . . undertake to prohibit . . . any activity aimed at promoting directly or indirectly, either union of Cyprus with any other State or partition of the Island.”⁶

Simultaneously, Minister of the Interior Polykarpos Yorgadjis, who was responsible for maintaining peace within Cyprus, conducted rallies in support of enosis. Yorgadjis publicly declared: “There is no place in Cyprus for anyone who is not Greek, who does not think Greek and who does not constantly feel Greek.”⁷ Yorgadjis created the “Akritas Plan” to achieve enosis under the pretext of constitutional reform.⁸ According to the Akritas Plan, the Turkish Cypriots would be presented with a series of proposed amendments to the Constitution of 1960.⁹ Among the proposed amendments were the revocation of the right of Turkish Cypriots to veto decisions affecting the future status of the island, as well as the right to form municipalities. Anticipating that the Turkish Cypriots would reject the proposed amendments, the Plan provided that should the Turkish Cypriots react strongly, they would at once be subdued by overwhelming force.

Thirteen proposed amendments were submitted to the Turkish Cypriot leadership on November 30, 1963. A constitutional crisis immediately followed, paralyzing the government. Meanwhile, EOKA commenced a new campaign of aggression.¹⁰ On the 23rd of December, 25 Turkish Cypriot patients were slaughtered at the Nicosia General Hospital. On the 24th of December, the Turkish Cypriot quarters in the villages of Ayios Vasilios and Skilloura were attacked, resulting in 21 deaths. Next, President Makarios dismissed all of the Turkish Cypriot cabinet ministers, members of the House of Representatives, and diplomats to the United Nations and other foreign capitals. The Turkish Cypriot community of Cyprus was thus instantly deprived of representation and what remained of its security.¹¹

In February 1964, United States Undersecretary of State, George W. Ball, visited Cyprus and declared that President Makarios was turning the island into his “private abattoir,” concluding that the Greek Cypriots “just want to be left alone to kill Turkish Cypriots.”¹² As hostilities escalated, the Turkish Air Force conducted several limited air strikes which calmed the situation slightly. In response, the U.S. State Department convinced Turkey that unilaterally exercising its right to intervene under the Treaty of Guarantee may be premature.

⁶ 382 U.N.T.S. 4 No. 5475 (August 16, 1960).

⁷ Oberling, at 68.

⁸ The Akritas Plan first appeared in public on April 21, 1966, in the Greek newspaper *Patris*, authored and signed by the “Chief of Akritas”, Mr. Yorgadjis. It is reprinted in Necati Ertekün, *The Cyprus Dispute*, 165 (1984). See also J. Reddaway, *Burdened with Cyprus*, 133-34 (1986) (stating that the Plan was a blueprint for securing Greek dominance on the island); Richard A. Patrick, *Political Geography and the Cyprus Conflict*, 37-38 (1976) (interview with Glafkos Clerides, then leader of the Greek Cypriot delegation to the Cypriot House of Representatives, confirming the existence of the Plan).

⁹ Ehrlich, *Cyprus, The Warlike Isle: Origins and Elements of the Current Crisis*, 18 *Stan. L. Rev.* 1021, 143 n. 95 (1966).

¹⁰ H. Scott Gibbons, *Peace Without Honor*, 10 (1969).

¹¹ Report of the Secretary-General on Recent Developments in Cyprus, U.N. Doc. S/6569, paras. 10, 11 (1965). See also, M. Tamkoç, *The Turkish Cypriot State: The Embodiment of the Right of Self Determination*, 74 (1988).

¹² Lawrence Stern, *The Wrong Horse*, 84 (1977).

During the next two years, the now stateless Turkish Cypriots were herded into small enclaves representing three percent of the island's geographic area.¹³ They were denied all government services but for the issuance of exit visas to leave the island permanently. In late 1967, fierce attacks against the Turkish Cypriots resumed, this time under the guise of the "Cypriot National Guard" which had been illegally established by General George Grivas, a retired Greek military officer who believed that enosis was best achieved by force. President Makarios, who regarded General Grivas as a dangerous egomaniac, asked the Greek government to limit Grivas' powers.¹⁴ Nevertheless, after forcibly disarming all of the U.N. troops in Larnaca, the National Guard attacked the villages of Ayios Theodoros and Kophinoi.¹⁵

Shortly after, on November 17, 1967, the Turkish Parliament authorized the government to go to war with Greece itself should the Cyprus situation deteriorate further. As Turkey and Greece neared the brink of war, an agreement was reached by which General Grivas was to be recalled to Greece, President Makarios was to dissolve General Grivas' illegally established National Guard, and compensation was to be paid to the victims of General Grivas' savagery. However, the National Guard remained intact and no compensation was paid. President Makarios continued his policy of economic strangulation of the Turkish Cypriot enclaves, many of which were crowded with farmers who no longer had access to their lands.¹⁶

In late 1973, General Dimitrios Ionnides seized power in Athens. Tired of President Makarios' slowness in achieving enosis, he overthrew the Makarios government and installed Nikos Sampson as president. Almost at once, Sampson, and a newly reconstituted EOKA-B, embarked upon a massacre of Makarios' followers. Hundreds of Greek Cypriots were butchered in less than one week. But the predominant victims were the Turkish Cypriots, who suffered in nearly every village on the island. The leader of the Turkish Cypriot community, Rauf Denktash, stated that Sampson's leadership of Cyprus was "as unacceptable as Adolf Hitler would be as president of Israel."¹⁷ By 1974, 20,000 Greek troops had covertly entered Cyprus in preparation for the final push toward enosis.¹⁸

Turkey, provoked beyond endurance, called for an emergency meeting with the United Kingdom and Greece in London. The Greek government chose not to attend. Turkey, after conferring with the United Kingdom, then invoked the Treaty of Guarantee and intervened on July 20, 1974. The initial battle lasted until July 22 when Turkish forces gained the advantage and ceased fire according to Resolution 353 of the United Nations Security Council, July 20, 1974.¹⁹ The original zone of operation encompassed only a narrow strip of land along the Kyrenia-Nicosia highway between the port in Kyrenia, where Plaintiffs claim rights to property, and the inland capital of Nicosia.

¹³ A map of the enclaves appears in Oberling, at 146.

¹⁴ Oberling, at 131.

¹⁵ *Id.* at 138-140.

¹⁶ *Id.* at 141-142.

¹⁷ Taki Theodoracopulos, *The Greek Upheaval: Kings, Demagogues & Bayonets*, 50 (1978).

¹⁸ *Id.* at 138.

¹⁹ See Patrick L. Townsend, *Vertical Assault: The Proof is in the Doing*, Nov. 1977 Proceedings of the U.S. Naval Inst.

Although the Turkish intervention caused the swift fall of the Greek junta in Athens and the reestablishment of the constitutional government in Cyprus,²⁰ the slaughter of Turkish Cypriot villagers outside of the Turkish zone of operation intensified as the illegal National Guard and EOKA-B stepped up their campaigns with heightened vengeance. Responding with the intention to establish a safe haven large enough to accommodate the entire Turkish Cypriot population on the island, on August 15, 1974, the Turkish Army recommenced military action. By the ceasefire of August 16, 1974, most of the northern third of Cyprus, including Famagusta, where Plaintiffs also claim rights to property, had come under the administrative control of the Turkish Army.

A population exchange ensued with Turkish Cypriots moving north and Greek Cypriots moving south. In August 1975, reinstated president Makarios signed a formal agreement recognizing the population exchanges.²¹ Intercommunal talks were launched, but with Makarios' sudden death in August 1977, a stalemate emerged. The new Greek Cypriot leader, Spyros Kyprianou, was intransigent.

Meanwhile, the stateless Turkish Cypriots in northern Cyprus began to administer themselves.²² The administration eventually assumed all of the functions of a separate government. In 1975, it began calling itself the Turkish Federated State of Cyprus. Then in 1983, formal independence was declared under the name of the Turkish Republic of Northern Cyprus (TRNC). Turkey has since recognized the TRNC.

Today, Turkey has no territorial ambitions on Cyprus, and Turkish Cypriots still hope to form some kind of federation with Greek Cypriots. However, safety concerns remain a constant hurdle. Enosis has never been renounced and the illegal National Guard has never been dissolved. As recently as October 17, 1994, Greek and Greek Cypriot forces conducted joint military exercises in southern Cyprus.

Turkey's intervention has since been declared legal under the terms of the Treaty of Guarantee of 1960. Its lawfulness has been acknowledged by the Standing Committee of the Consultative Assembly of the Council of Europe,²³ The Select Committee of the British House of Commons,²⁴ and even by the Greek Court of Appeals sitting in Athens.²⁵

²⁰ Cf. Statement by Amnesty International and the International Student Movement for the U.N., 57 U.N. ESCOR, Comm'n on Human Rights (708th mtg.) Supp. No. 57, at 77, U.N. Doc. E/CN.4/Sub.2/SR. 708 (1974); Richard B. Lillich, *International Human Rights, Problems of Law, Policy and Practice*, 410 (Little, Brown, & Company Limited 2d ed. 1981).

²¹ U.N. Doc. S/11789, U.N. Doc. S/11900, paras. 10, 31, 36 (1975).

²² See Blay, *Self Determination in Cyprus: The New Dimensions of an Old Conflict*, 10 *Austl. Y.B. Int'l L.* 67, 71-72 (1984).

²³ 1976 *Eur. Y.B. (Council of Eur.)* 432.

²⁴ Gr. Brit. H.C., Select Committee Report on Cyprus, (1975-76) 17 Sessional Papers, at 8; See, E. Lauterpacht, Turkish Republic of Northern Cyprus: The Status of the Two Communities in Cyprus, U.N. Doc. A/44/968 S/21463 (1990) (stating, "The British Government, though not expressing positive agreement with [the view of the Select Committee], has never -- despite repeated opportunities -- denied it. . . . Clearly, what Britain is entitled to do, Turkey is equally entitled to do." See also Doswald-Beck, The Legal Validity of Military Intervention by Agreement of the Government, 56 *Br. Y.B. Int'l L.* 189 (1985) (supporting Turkey's action).

²⁵ Decision 2658/79, Greek Court of Appeals (Athens 1979) (stating, "The Turkish military intervention in Cyprus, which was carried out in accordance with the Zurich and London Accords, was legal. Turkey, as one of the Guarantor Powers, had the right to fulfill her obligations. The real culprits . . . are the Greek officers who engineered and staged a coup and prepared the conditions for this intervention.").