



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF JOSEPHIDES v. TURKEY

(Application no. 21887/93)

JUDGMENT
(Just satisfaction)

STRASBOURG

26 October 2010

FINAL

11/04/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Josephides v. Turkey,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Işıl Karakaş, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 5 October 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 21887/93) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Cypriot national, Mr Christos Josephides (“the applicant”), on 30 December 1992.

2. In a judgment delivered on 22 September 2009 (“the principal judgment”), the Court dismissed various preliminary objections raised by the Turkish Government and found a continuing violation of Article 1 of Protocol No. 1 to the Convention by virtue of the fact that the applicant was denied access to and control, use and enjoyment of his properties as well as any compensation for the interference with his property rights. Furthermore, it found that it was not necessary to examine the applicant's complaints under Articles 1, 13, 14 and 18 of the Convention (*Josephides v. Turkey*, no. 21887/93, §§ 13, 25 and 28 and points 1-3 of the operative provisions, 22 September 2009).

3. Under Article 41 of the Convention the applicant sought just satisfaction of 1,550,000 Cypriot pounds (CYP – approximately 2,648,330 euros (EUR)) for the deprivation of his properties concerning the period between January 1987, when the respondent Government accepted the right of individual petition, and January 2008. A valuation report, setting out the basis of the applicant's loss, was appended to his observations. Furthermore, the applicant claimed approximately EUR 239,204 in respect of non-pecuniary damage and approximately EUR 9,048 for the costs and expenses incurred before the Court.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it in whole and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, §§ 48 and 51, and point 4 of the operative provisions).

5. On 4 March 2010 the Court invited the applicant and the Government to submit any materials which they considered relevant to assessing the 1974 market value of the properties concerned by the principal judgment. The applicant was moreover invited to submit written evidence that the properties at stake were still registered in his name or to indicate and substantiate any transfer of ownership which might have taken place.

6. The applicant and the Government each filed observations on these matters. On 21 May 2010 the applicant produced certificates of ownership of Turkish-occupied immovable properties issued by the Department of Lands and Surveys of the Republic of Cyprus. It transpires from these documents that in April 2010 the properties described in paragraph 13 below were registered in the applicant's name, with the exception of the property under paragraph 13 (j) below, which was registered in the name of Mr Costas Josephides. The applicant stated that the latter was his brother, to whom he had transferred the plot of land at stake on 21 December 2005.

THE LAW

I. PRELIMINARY ISSUE

7. In a letter of 22 April 2010 the Government requested the Court to decide that it was not necessary to continue the examination of the applicant's just satisfaction claims. They invoked the principles affirmed by the Grand Chamber in *Demopoulos and Others v. Turkey* ([GC] (Dec.), nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, 1 March 2010) and argued that the applicant should address his claims to the Immoveable Property Commission (the "IPC") instituted by the "TRNC" Law 67/2005. They reiterated their position on the issue of exhaustion of domestic remedies in the present case and in other similar cases on 8 and 22 June 2010.

8. The Court first observes that the Government's submissions were unsolicited; they were received by the Registry long after the expiration of the time-limit for filing comments on just satisfaction and almost two months after the delivery of the Grand Chamber's decision in

Demopoulos. It could therefore be held that the Government are estopped from raising the matter at this stage of the proceedings.

9. In any event, the Court cannot but reiterate its case-law according to which objections based on non-exhaustion of domestic remedies raised after an application has been declared admissible cannot be taken into account at the merits stage (see *Demades v. Turkey* (merits), no. 16219/90, § 20, 31 July 2003, and *Alexandrou v. Turkey* (merits), no. 16162/90, § 21, 20 January 2009) or at a later stage. This approach has not been modified by the Grand Chamber, as the cases of *Demopoulos and Others* had not been declared admissible when Law 67/2005 entered into force and when Turkey objected that domestic remedies had not been exhausted.

10. Furthermore, the Court considers that its previous finding in the present case that the applicant was not required to exhaust the remedy introduced by Law 67/2005 constitutes *res judicata*. It recalls that after the compensation mechanism before the IPC was introduced, the Government raised an objection based on non-exhaustion of domestic remedies. This objection was rejected in the principal judgment (see paragraph 13 of the principal judgment and point 1 of its operative provisions). The Government also unsuccessfully requested the referral of the case to the Grand Chamber.

11. It follows that the Government's request to stay the examination of the applicant's claims for just satisfaction should be rejected. The Court will therefore continue to examine the case under Article 41 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. Article 41 of the Convention provides:

“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.”

A. Pecuniary and non-pecuniary damage

1. *The parties' submissions*

(a) The applicant

13. In his just satisfaction claims of 29 October 1999, the applicant requested CYP 30,197 (approximately EUR 51,594) for pecuniary damage. He relied on an expert's report assessing the value of his losses which included the loss of annual rent collected or expected to be collected from renting out his plots of land, plus interest from the date on which such rents were due until the day of payment. The rent claimed was for the period

dating back to January 1987, when the respondent Government accepted the right of individual petition, until October 1999. The applicant did not claim compensation for any purported expropriation since he was still the legal owner of the properties. The evaluation report contained a description of the applicant's plots of land in the Districts of Nicosia and Larnaca. These plots of land were registered as follows (see paragraph 8 of the principal judgment):

- a) Nicosia/Piroi, plot no. 124, sheet/plan 31/26, registration no. 4475, share: $\frac{1}{2}$, area: 25,753 square metres (m²);
- (b) Larnaca/Athienou, plot no. 607, sheet/plan 31/46, registration no. 31803, share: whole; area: 2,342 m²;
- (c) Larnaca/Athienou, plot no. 670, sheet/plan 31/46, registration no. 23140, share: whole; area: 1,673 m²;
- (d) Larnaca/Athienou, plot no. 671, sheet/plan 31/46, registration no. 25893, share: whole; area: 1,673 m²;
- (e) Larnaca/Athienou, plot no. 635, sheet/plan 31/46, registration no. 23158, share: whole; area: 2,676 m²;
- (f) Larnaca/Athienou, plot no. 291, sheet/plan 31/54, registration no. 25885, share: whole; area: 11,706 m²;
- (g) Larnaca/Athienou, plot no. 339, sheet/plan 31/43, registration no. 25887, share: whole; area: 6,680 m²;
- (h) Larnaca/Athienou, plot no. 338, sheet/plan 31/43, registration no. 23126, share: whole; area: 6,666 m²;
- (i) Larnaca/Athienou, plot no. 82, sheet/plan 31/43, registration no. 29092, share: whole; area: 5,017 m²;
- (j) Larnaca/Athienou, plot no. 122, sheet/plan 31/36, registration no. 23392, share: $\frac{1}{2}$; area: 12,041 m²;
- (k) Larnaca/Arsos, plot no. 59, sheet/plan 32/25, registration no. 842, share: $\frac{1}{2}$; area: 22,409 m².

The plots described under (a) and (k) above belonged to the applicant's father, who had transferred them to him on 10 April 1997 and 23 June 1995 respectively.

14. The starting point of the valuation report was the rental value of the applicant's plots of land in 1974, calculated on the basis of a percentage (5 %) of the market value of the properties. According to the expert, the total annual rent which could have been obtained in 1974 was CYP 353 (approximately EUR 603). This sum was subsequently adjusted upwards according to an annual rental increase (varying from 5 % to 7 %), in order to arrive at the total annual rent receivable in 1987 (CYP 853) and in 1999 (CYP 3,111). For the plots described in paragraph 13 (a) and (k) above, the rent receivable was calculated only from the dates (1997 and 1995 respectively) on which the applicant acquired ownership of the fields. Compound interest for delayed payment was applied at a rate of 8 % per annum.

15. The applicant further requested CYP 160,000 (approximately EUR 273,376) for the impossibility of developing the plot described in paragraph 13 (a) above, which was land which could be developed, located at approximately 12 kilometres from Nicosia. The total sum requested in 1999 for pecuniary damage was thus CYP 190,197 (approximately EUR 324,970).

16. On 11 January 2008, following a request from the Court for an update on the developments of the case, the applicant submitted updated claims for just satisfaction. He alleged that the time elapsed since 1999 had increased his losses and that the total sum due for pecuniary damage was at least CYP 1,550,000 (approximately EUR 2,648,330).

17. On 21 May 2010 the applicant submitted updated claims for just satisfaction, calculated on the basis of the estimates contained in the valuation report produced in 1999 (see paragraphs 13-14 above). He alleged that, taking into account that one of the properties had been transferred to his brother in 2005 (see paragraph 6 above), the whole sum due for loss of use for the period 1987-2010 was EUR 154,000. The applicant moreover considered that if the Turkish forces had not invaded northern Cyprus, he could have developed his plot described under paragraph 13 (a) above into 16 building sites; on the basis of the sale offers currently published in the Cyprus press, it could be assumed that each site would have, in 2010, a price of EUR 300,000. It followed that their overall value would have been EUR 4,800,000, from which a developing cost of EUR 350,000 should be deducted. The net benefit would therefore have been EUR 4,450,000. As he had a $\frac{1}{2}$ share in the plot at issue, the applicant requested the Court to grant him at least half of this sum (EUR 2,225,000), to which the amount for loss of use (EUR 154,000) should be added. The applicant's total claim for pecuniary damage was thus EUR 2,379,000.

18. The applicant also specified that in 1977 he had acquired in public auction a plot of land of 5,352 square metres, located in the vicinity of the buffer zone, for CYP 480 (approximately EUR 820). He underlined that this price was much lower than the 1974 market value, as the Turkish invasion had provoked a deflation of the prices of land. The applicant also produced copies of advertisings published in the Cypriot press in March and May 2010 and alleged that it transpired from these documents that the current prices of land were the following: between EUR 8,000 and EUR 15,000 per decare for plots located in the Turkish-occupied areas; between EUR 20,000 and EUR 50,000 per decare for agricultural land with trees and irrigation facilities; between EUR 200,000 and EUR 400,000 per decare for plots which could be developed into building sites.

19. In his just satisfaction claims of 29 October 1999, the applicant further claimed CYP 140,000 (approximately EUR 239,204) in respect of non-pecuniary damage. In particular, he requested CYP 5,000 per year for the period 1987-1991, CYP 10,000 per year for the period 1992-1999 plus

the additional sum of CYP 35,000. In his updated claims for just satisfaction of 21 May 2010, he raised his claim up to EUR 365,500 (EUR 8,500 for each of the years between 1987 and 1991 and EUR 17,000 for each of the years between 1992 and 2010).

(b) The Government

20. The Government filed comments on the applicant's updated claims for just satisfaction on 30 June 2008, 15 October 2008 and 22 June 2010. They pointed out that the present application was part of a cluster of similar cases raising a number of problematic issues and noted that some applicants had shared properties and that it was not proved that their co-owners had agreed to the partition of the possessions. Nor, when claiming damages based on the assumption that the properties had been rented after 1974, had the applicants shown that the rights of the said co-owners under domestic law had been respected.

21. The Government submitted that as an annual increase of the value of the properties had been applied, it would be unfair to add compound interest for delayed payment, and that Turkey had recognised the jurisdiction of the Court on 21 January 1990, and not in January 1987. In any event, the alleged 1974 market value of the properties was exorbitant, highly excessive and speculative; it was not based on any real data with which to make a comparison and made insufficient allowance for the volatility of the property market and its susceptibility to influences both domestic and international. The report submitted by the applicant had instead proceeded on the assumption that the property market would have continued to flourish with sustained growth during the whole period under consideration.

22. The Government produced a valuation report prepared by the Turkish-Cypriot authorities, which they considered to be based on a “realistic assessment of the 1974 market values, having regard to the relevant land records and comparative sales in the areas where the properties [were] situated”. This report contained two proposals, assessing, respectively, the sum due for the loss of use of the properties and their present value. The second proposal was made in order to give the applicant the option to sell the properties to the State, thereby relinquishing title to and claims in respect of it.

23. The report prepared by the Turkish-Cypriot authorities specified that it would be possible to envisage, either immediately or after the resolution of the Cyprus problem, restitution of the properties described in paragraph 13 above. In case the conditions for restitution were not fulfilled, the applicant could claim financial compensation, to be calculated on the basis of the loss of income (by applying a 5% rent on the 1974 market values) and increase in value of the properties between 1974 and the date of payment. Had the applicant applied to the IPC, the latter would have offered CYP 6,837.24 (approximately EUR 11,682) to compensate the loss of use

and CYP 7,282.59 (approximately EUR 12,443) for the value of the properties. According to an expert appointed by the authorities of the “TRNC”, the 1974 open-market value of the applicant's properties was the following:

- plot of land described in paragraph 13 (b) above: CYP 80 (approximately EUR 136);
- plot of land described in paragraph 13 (c) above: CYP 50 (approximately EUR 85);
- plot of land described in paragraph 13 (d) above: CYP 50 (approximately EUR 85);
- plot of land described in paragraph 13 (e) above: CYP 80 (approximately EUR 136);
- plot of land described in paragraph 13 (f) above: CYP 350 (approximately EUR 598);
- plot of land described in paragraph 13 (g) above: CYP 200 (approximately EUR 341);
- plot of land described in paragraph 13 (h) above: CYP 200 (approximately EUR 341);
- plot of land described in paragraph 13 (j) above: CYP 180 (approximately EUR 307).

No estimate was given for the plots described in paragraph 13 (a), (i) and (k) above. The IPC thus took into account only eight of the eleven plots of land owned by the applicant.

24. Upon fulfilment of certain conditions, the IPC could also have offered the applicant exchange of his properties with Turkish-Cypriot properties located in the south of the island.

25. In their comments of 22 June 2010, the Government recalled that in the case of *Demopoulos and Others* (cited above) the Grand Chamber had found that the IPC was an adequate domestic remedy for those claiming a violation of Article 1 of Protocol No. 1. Notwithstanding the adoption of a judgment on the merits, it would still be open to the applicant to apply to the IPC, which would calculate the current value and the 1974 value of the properties “in a credential way based on actual data”. On 27 May 2010 the IPC had sent a letter to the applicant, inviting him to introduce an application before it.

26. The Government recalled that under Law No. 67/2005, the following means of redress were available: a) restitution; b) compensation; c) exchange. The relevant provisions of the law at issue are described in *Demopoulos and Others* (cited above, §§ 35-37).

27. The Government further noted that in making its assessment as regarded compensation for the loss of use, the IPC had collected data from the Department of Lands and Surveys on the 1973-1974 purchase prices for comparable properties. It had also examined the development of interest rates of the Cyprus Central Bank. The loss of income was then calculated by

assuming that the obtainable rent would have been 5 % of the value of the properties; this last value had been modified every year on the basis of the land market value index. Cyprus Central Bank interest rates had been applied on the sums due since 1974.

28. Being in possession of the land registers, the Turkish-Cypriot authorities were in a better position than the applicants and the Greek-Cypriot authorities to assess the market values of the properties in a realistic and reliable manner. The applicants had put forward exaggerated claims and had tended to inflate the 1974 values of their possessions. The Government therefore requested the Court to rule on compensation on the basis of the calculations made by the Turkish-Cypriot authorities, which were “credential and objective in every aspect”.

29. The report prepared by the Turkish-Cypriot authorities confirmed that it would be possible to envisage restitution of the properties described in paragraph 13 above. Had the applicant applied to the IPC, the latter would have increased its offer up to CYP 7,820 (approximately EUR 13,361) to compensate the loss of use and up to CYP 7,971.81 (approximately EUR 13,620) for the value of the properties. The expert appointed by the authorities of the “TRNC” also confirmed the 1974 open-market values of the applicant's properties as indicated in paragraph 23 above.

30. Finally, the Government considered that the amount claimed in respect of non-pecuniary damage was excessive and unrealistic; given the existence of an effective domestic remedy, the Court should keep the award for such damage to a minimum.

2. The Court's assessment

31. The Court recalls that it has concluded that there had been a continuing violation of the applicant's rights guaranteed by Article 1 of Protocol No. 1 by reason of the complete denial of the right of the applicant to the peaceful enjoyment of his properties in northern Cyprus (see paragraph 25 of the principal judgment). Furthermore, its finding of a violation of Article 1 of Protocol No. 1 was based on the fact that, as a consequence of being continuously denied access to his land since 1974, the applicant had effectively lost all access and control as well as all possibilities to use and enjoy his properties (see paragraph 23 of the principal judgment). He is therefore entitled to a measure of compensation in respect of losses directly related to this violation of his rights as from the date of deposit of Turkey's declaration recognising the right of individual petition under former Article 25 of the Convention, namely 22 January 1987, until the present time (see *Cankoçak v. Turkey*, nos. 25182/94 and 26956/95, § 26, 20 February 2001, and *Demades v. Turkey* (just satisfaction), no. 16219/90, § 21, 22 April 2008). However, for the plots described in paragraph 13 (a) and (k) above the applicant's entitlement

to compensation should start from the date on which he acquired ownership of the land at stake, namely from 10 April 1997 and 23 June 1995 (see paragraph 9 of the principal judgment and paragraph 13 above); for the plot described 13 (j) above the period to be taken into consideration ends on 21 December 2005, on which date the applicant transferred this land to his brother (see paragraph 6 above).

32. In connection with this, the Court observes that the affirmations of ownership of Turkish-occupied immovable properties produced by the applicant show that in April 2010 he was still the owner of ten of the properties described in paragraph 13 above (see paragraph 6 above).

33. In the opinion of the Court, the valuations furnished by the applicant involve a significant degree of speculation and make insufficient allowance for the volatility of the property market and its susceptibility to influences both domestic and international (see *Loizidou* (just satisfaction), 28 July 1998, § 31, *Reports of Judgments and Decisions* 1998-IV). An even higher degree of speculation is involved in assessing the profits that the applicant could have obtained from developing into building sites the land described in paragraph 13 (a) above (see paragraphs 15 and 17 above). Accordingly, in assessing the pecuniary damage sustained by the applicant, the Court has, as far as appropriate, considered the estimates provided by him (see *Xenides-Arestis v. Turkey* (just satisfaction), no. 46347/99, § 41, 7 December 2006). In general it considers as reasonable the approach to assessing the loss suffered by the applicant with reference to the annual ground rent, calculated as a percentage of the market value of the properties, that could have been earned during the relevant period (*Loizidou* (just satisfaction), cited above, § 33, and *Demades* (just satisfaction), cited above, § 23). Furthermore, the Court has taken into account the uncertainties, inherent in any attempt to quantify the real losses incurred by the applicant (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 102, Series A no. 310, and (merits) 18 December 1996, § 32, *Reports* 1996-VI).

34. The Court notes that notwithstanding its request to submit material relevant to assessing the 1974 market value of the applicant's properties, the parties have produced few elements in this respect. The Government have relied on the accuracy of the IPC's calculations (see paragraphs 22 and 27-28 above), while the applicant has referred to the sale offers published in 2010 in the Cyprus press and to the acquisition of agricultural land in a public action in 1977 (see paragraph 18 above).

35. The Court further observes that the applicant submitted an additional claim in the form of annual compound interest in respect of the losses on account of the delay in the payment of the sums due. While the Court considers that a certain amount of compensation in the form of statutory interest should be awarded to the applicant, it finds that the rates applied by

him are on the high side (see, *mutatis mutandis*, *Demades* (just satisfaction), cited above, § 24).

36. Finally, the Court is of the opinion that an award should be made in respect of the anguish and feelings of helplessness and frustration which the applicant must have experienced over the years in not being able to use his properties as he saw fit (see *Demades* (just satisfaction), cited above, § 29, and *Xenides-Arestis* (just satisfaction), cited above, § 47).

37. Having regard to the above considerations, the Court is of the opinion that the sums claimed by the applicant in respect of pecuniary and non-pecuniary damage (respectively EUR 2,379,000 and EUR 365,500 – see paragraphs 17 and 19 above) are manifestly excessive. It notes that no construction had been built on the applicant's plots of land and that the valuation report submitted in 1999 had concluded that the total sum due to the applicant for pecuniary damage was EUR 51,594 (see paragraph 13 above). At the same time, the amount which the “TRNC” authorities could have offered the applicant in respect of loss of use (approximately EUR 13,361 – see paragraph 29 above) does not seem to take into due account the number of plots of land owned by the applicant and described in paragraph 13 above, which had a total area of 68,534 square metres. Indeed, as indicated in paragraph 23 above, the IPC calculations took into account only eight of the eleven fields owned by the applicant. Making its assessment on an equitable basis, the Court decides to award the applicant EUR 120,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

38. In his just satisfaction claims of 29 October 1999, the applicant, who is a lawyer and presented his own case before the Court (see paragraph 2 of the principal judgment), sought CYP 5,296 (approximately EUR 9,048) for the costs and expenses incurred before the Convention organs. This sum included CYP 1,296 (approximately EUR 2,214) for the costs of the expert report assessing the value of his properties. In his updated claims of 21 May 2010 the applicant raised his claim for costs and expenses up to EUR 20,000.

39. The Government did not comment on this point.

40. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

41. The Court notes that the case involved perusing a certain amount of factual and documentary evidence and required a fair degree of research and preparation. In particular, the costs associated with producing a valuation report in view of the continuing nature of the violation at stake were

essential for enabling the Court to reach its decision regarding the issue of just satisfaction (see *Demades* (just satisfaction), cited above, § 34). However, it should be kept in mind that the applicant presented his own case before the Court.

42. In the light of the above, the Court considers the amount claimed for the costs and expenses relating to the proceedings before it excessive and decides to award the total sum of EUR 2,000.

C. Default interest

43. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's request to stay the examination of the applicant's claims for just satisfaction;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 120,000 (one hundred and twenty thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President