



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

FOURTH SECTION

CASE OF SKYROPIIA YIALIAS LTD v. TURKEY

(Application no. 47884/99)

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 Skyropiia Yialias Ltd 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. 47884/99) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a company incorporated under Cypriot law, Skyropiia Yialias Ltd (“the applicant”), on 24 March 1999. According to a certificate issued on 20 January 1999 by the Republic of Cyprus, the applicant company's shareholders are Mrs Elena V. Proestou (139 shares) and Mr Georgios Christoforides (1 share).

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 company was denied access to and control, use and enjoyment of its properties as well as any compensation for the interference with its property rights. Furthermore, it found that it was not necessary to examine the applicant's complaint under Article 14 of the Convention (*Skyropiia Yialias Ltd v. Turkey*, no. 47884/99, §§ 12, 21 and 24 and points 1-3 of the operative provisions, 22 September 2009).

3. Under Article 41 of the Convention the applicant sought just satisfaction of 18,627,531.78 Cypriot pounds (CYP – approximately 31,827,000 euros (EUR)) for the deprivation of its properties concerning the period between January 1987, when the respondent Government accepted the right of individual petition, and 31 December 2007. Two affidavits from its managing director, setting out the basis of the applicant's loss, were appended to its observations. Furthermore, the applicant claimed

approximately EUR 6,030,100 in respect of non-pecuniary damage and EUR 9,991.18 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.*, §§ 39 and 42, 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 was still registered in its 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 27 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 on 7 May 2010 the plots of land described in paragraph 13 below were registered in the applicant's name.

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 its 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 12 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 its just satisfaction claims of 23 November 2000, the applicant requested CYP 6,941,271 (approximately EUR 11,859,855) for pecuniary damage. It recalled that it was the owner of four plots of land (plot no. 166, sheet plan XXXI/4, registration no. A196, area: 1,217 m²; plot no. 168, sheet plan XXXI/4, registration no. A197, area: 2,732 m²; plot no. 170, sheet plan XXXI/4, registration no. A200, area: 8,078 m²; plot no. 230, sheet plan XXXI/20.W.1, registration no. B229, area: 25,244 m² – see paragraph 8 of the principal judgment), on which a quarry was situated.

Before 1974, the applicant company had obtained a permit to operate the quarry and was the owner of several machines and equipment (see paragraph 9 of the principal judgment).

14. The applicant relied on an affidavit from its managing director, Mr Vassos Proestos, stating that Skyropiia Yialias Ltd was operating profitably and that prospects were very good in view of the Cypriot Government's development plans to build roads, airports, marinas and tourist developments. The company had obtained a number of permits to carry out its business. In the last four years of its activity, the company's annual profits amounted, on average, to CYP 17,300 (approximately EUR 29,558). Assuming an increase in profits of 15 % per year, the total loss of profits from 1987 until November 2000 would have been CYP 6,941,271, a sum which included compound interest for delayed payment at a rate of 9 % per annum.

15. On 24 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, which were meant to cover the loss of the use of the properties from 1 January 1987 to 31 December 2007. It produced a fresh affidavit from its managing director, which, on the basis of the criteria adopted in the previous affidavit, concluded that the whole sum due for the loss of profits was CYP 12,885,722.6 plus CYP 5,741,809.18 for interest (the interest rate from 2000 onwards was lowered to 6 % per annum). The total sum claimed under this head was thus CYP 18,627,531.78 (approximately EUR 31,827,000).

16. On 27 May 2010 the applicant's director produced a revised valuation according to which the sum due for the period 1987-2010 was EUR 43,748,445.03. According to this valuation, the applicant's profits, calculated at CYP 20,000 in 1974, would have constantly increased, reaching CYP 123,055.75 in 1987, CYP 497,829.15 in 1997, CYP 1,475,443.70 in 2007 and CYP 1,708,010.51 in 2010.

17. The applicant further submitted an "independent valuation report", which was meant to cover the loss of profit for the period between 1 January 1987 and 31 December 2010. The expert appointed by the applicant company considered that the whole sum due to his client for pecuniary damage was EUR 26,392,276.

18. The expert observed that three of the applicant's fields were used as a base for conducting the quarrying business and/or used for the installation of machinery and storage of aggregate materials, while one field was kept as a reserve for future quarrying. The licence granted by the Republic of Cyprus to carry out quarrying of aggregate materials along Yialias River and the existing and potential fields could have ensured a length of business exceeding forty years. Due to rapid economic growth, at the time of the Turkish invasion there was in Cyprus an increasing demand for building aggregates; the applicant company was one of the few existing active

quarries and was the only one with brand new equipment. Photographs of the quarry, of its personnel and its equipments were attached to the expert's report.

19. The expert took into account the trade disturbance due to the fact that the applicant had not been allowed to continue its established course of business and the compound interest due until 31 May 2010. He applied the following interest rates: 9 % until 31 December 2000; 6 % until 30 November 2007; 5 % from 1 December 2007 onwards. Taking into account the financial figures of business prior to 1974 and the projections for the following years, the expert concluded that the applicant's company net profits (difference between total revenues and total costs) for the period 1987-2010 would have varied for a minimum of EUR 239,058 in 1999 to a maximum of EUR 697,774 in 2009. The total net profit for the period under consideration would have been EUR 12,269,568, while the interest due to the applicant company amounted to EUR 14,122,708.

20. In its just satisfaction claims of 23 November 2000, the applicant company further claimed CYP 3,500,000 (approximately EUR 5,980,100) in respect of non-pecuniary damage. In its updated claims for just satisfaction of 24 January 2008 it requested the additional sum of EUR 50,000.

(b) The Government

21. 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 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. Moreover, 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 them.

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 6,664.87 (approximately EUR 11,387) to compensate the loss of use and CYP 7,098.99 (approximately EUR 12,129) 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 no. 166: CYP 50 (approximately EUR 85);
- plot no. 168: CYP 100 (approximately EUR 170);
- plot no. 170: CYP 250 (approximately EUR 427);
- plot no. 230: CYP 760 (approximately EUR 1,298).

24. Upon fulfilment of certain conditions, the IPC could also have offered the applicant exchange of its 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's representative, inviting his client 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 company applied to the IPC, the latter would have offered CYP 7,622.86 (approximately EUR 13,024) to compensate the loss of use and CYP 7,771.84 (approximately EUR 13,278) 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 plots of land 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 rights of the applicant company with respect to its peaceful enjoyment of its properties in northern Cyprus (see paragraph 21 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 its plots of lands since 1974, the applicant company had effectively lost all access and control as well as all possibilities to use and enjoy its properties (see paragraph 19 of the principal judgment). It is therefore entitled to a measure of compensation in respect of losses directly related to this violation of its 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).

32. In connection with this, the Court observes that the affirmations of ownership of Turkish-occupied immovable properties produced by the applicant company (see paragraph 6 above) show that on 7 May 2010 it was still the owner of the plots of land described in paragraph 13 above.

33. In the opinion of the Court, the valuations furnished by the applicant company involve a significant degree of speculation due to the absence of

real data with which to make a comparison and make insufficient allowance for the volatility of the property market and its susceptibility to influences both domestic and international (see *Loizidou* (just satisfaction), cited above). An even higher degree of speculation is involved in the calculations concerning the applicant company's alleged loss of the profits which might have been earned from running its quarrying business. Accordingly, in assessing the pecuniary damage sustained by the applicant company, the Court has, as far as appropriate, considered the estimates provided by it (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 company 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 (see *Loizidou v. Turkey* (just satisfaction), 28 July 1998, § 33, *Reports of Judgments and Decisions* 1998-IV, 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 company (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 company has confined itself in providing estimates of the profits which could have earned by conducting its business (see paragraphs 16-19 above). The starting point of these estimates was that each and every year the quarrying business would have generated a profit.

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 company, it finds that the rates applied by it are on the high side (see, *mutatis mutandis*, *Demades* (just satisfaction), cited above, § 24).

36. Finally, the Court recalls that it is empowered to award pecuniary compensation for non-pecuniary damage to commercial companies. Non-pecuniary damage suffered by such companies may include heads of claim that are to a greater or lesser extent "objective" or "subjective". Among these, account should be taken of the company's reputation, uncertainty in decision-planning, disruption in the management of the company (for which there is no precise method of calculating the consequences) and lastly, albeit to a lesser degree, the anxiety and

inconvenience caused to the members of the management team (see *Comingersoll S.A. v. Portugal*, no. 35382/97, § 35, ECHR 2000-IV).

37. In the instant case, the violation of the applicant company's rights under Article 1 of Protocol No. 1 must have caused it, its directors and shareholders considerable inconvenience and prolonged uncertainty in the conduct of the company's business. It is therefore legitimate to consider that the applicant company was left in a state of uncertainty that justifies making an award of moral compensation (see also, *mutatis mutandis*, *Demades* (just satisfaction), cited above, § 29, and *Xenides-Arestis* (just satisfaction), cited above, § 47).

38. 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 26,392,276 according to the expert appointed by it – or EUR 43,748,445.03 according to its managing director – and EUR 6,030,100 – see paragraphs 16-19 and 20 above) are manifestly excessive. In this respect, the Court notes that even though the loss of the possibility of operating the quarry on the plots of land described in paragraph 13 above has undoubtedly created a serious trouble in the business conducted by the applicant, the latter could have envisaged the eventuality of installing the quarry in land located in the unoccupied parts of Cyprus. At the same time, the amount which the “TRNC” authorities could have offered the applicant in respect of loss of use (EUR 13,024 – see paragraph 29 above) does not seem to take into due account the fact that the applicant company had obtained a permit to operate a quarry on its plots of land, which had a total area of 37,271 square metres, and that quarrying equipment has been installed *in situ*. Making its assessment on an equitable basis, the Court decides to award the applicant EUR 200,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

39. In its just satisfaction claims of 23 November 2000, relying on bills from its representative, the applicant sought CYP 3,613 (approximately EUR 6,173) for the costs and expenses incurred before the Court. In its updated claims for just satisfaction of 24 January 2008, the applicant submitted an additional bill of costs amounting to EUR 3,818. It indicated that the overall sum claimed for cost and expenses was EUR 9,991.18 (including V.A.T.). Finally, on 27 May 2010 the applicant submitted that its further legal fees and expert report's costs amounted to EUR 2,955.50 and EUR 26,000 plus VAT respectively.

40. The Government did not comment on this point.

41. 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).

42. 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 to enable the Court to reach its decision regarding the issue of just satisfaction (see *Demades* (just satisfaction), cited above, § 34).

43. Although the Court does not doubt that the fees claimed were actually incurred, it considers the amount claimed for the costs and expenses relating to the proceedings before it excessive and decides to award a total sum of EUR 8,000.

C. Default interest

44. 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 200,000 (two hundred thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
 - (ii) EUR 8,000 (eight 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