



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

FOURTH SECTION

CASE OF ROCK RUBY HOTELS LTD v. TURKEY

(Application no. 46159/99)

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 Rock Ruby Hotels 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. 46159/99) 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, Rock Ruby Hotels Ltd (“the applicant”), on 25 January 1999.

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 property 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 (*Rock Ruby Hotels Ltd v. Turkey*, no. 46159/99, §§ 11, 20 and 22 and points 1-3 of the operative provisions, 22 September 2009).

3. Under Article 41 of the Convention the applicant company sought just satisfaction of 3,571,287 Cypriot pounds (CYP – approximately 6,101,900 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 valuation reports, setting out the basis of the applicant's loss, were appended to its observations. Furthermore, the applicant claimed approximately EUR 1,541,607 in respect of non-pecuniary damage and EUR 10,240.32 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.*, §§ 38 and 41, 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 property concerned by the principal judgment. The applicant was moreover invited to submit written evidence that the property 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 26 May 2010 the applicant produced a certificate of ownership of Turkish-occupied immovable property issued by the Department of Lands and Surveys of the Republic of Cyprus. It transpires from this document that on 11 March 2010 the property described in paragraph 13 below was registered in the name of “Rock Ruby Hotels Limited”.

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 Immovable 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 11 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 31 July 2002, the applicant requested CYP 1,686,014 (approximately EUR 2,880,723) for pecuniary damage. It relied on an expert's report assessing the value of its losses which included the loss of annual rent collected or expected to be collected from renting out its property, 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 1990 until 1 January 2003. The applicant did not claim compensation for any purported expropriation since it was still the legal owner of the property. The valuation report contained a description of the Rock Ruby hotel (see paragraph 8 of the principal judgment), located in

Conon street in Kyrenia, and of the plot of land on which the hotel was built. The latter consisted of 56 rooms (each one with a private bath or shower and veranda) and 116 beds. Twenty of these rooms had been created following an expansion programme completed by late 1973. The hotel was situated on a seaside plot (plot no. 192, sheet/plan 12/12, block D, land area 1,989 m²) at a short distance west of Kyrenia harbour. The plot had a rectangular shape, flat surface at sea level, with a frontage of 60 metres on Conon street and 30 metres on the sea. The hotel was fully air conditioned and centrally heated and had a number of facilities (reception area, cafeteria, open-air restaurant, outdoor swimming pool, garden). The applicant company alleged that the hotel was operating at an annual profit of about CYP 66,400 (approximately EUR 113,451). The applicant company also underlined that in 1974 the town of Kyrenia was one of the most popular tourist resorts of Cyprus. The demand for hotel accommodation in Kyrenia was high and good hotels were achieving high occupancy rates.

14. The starting point of the valuation report was the income receivable in July 1974. Having regard to the attractiveness of the hotel and to the profits made by other similar hotels in Cyprus, the Rock Ruby could have obtained CYP 35 (approximately EUR 59) per room per month. Taking into account that the hotel had 56 rooms and after the deduction of a percentage of 10 % for possible outgoings, the 1974 annual rental value was estimated at CYP 21,168 (approximately EUR 36,167). This sum was subsequently adjusted to 1990 values by taking into account:

- (a) the nature of the area where the property was situated;
- (b) the trends of rents for the period 1970 – 1974 in similar areas;
- (c) the trends of rents for the period after 1974 in the unoccupied areas of Cyprus (based on the Consumer Price Index 1960 – 2002 for Rents and Housing issued by the Department of Statistics and Research of the Government of Cyprus, increased by a percentage of 25 %).

15. Finally, compound interest for delayed payment was applied at a rate of 8 % per annum up to the end of 2000 and of 6% per annum for the years 2001 – 2002 (the total interest claimed amounted to CYP 643,567 – approximately EUR 1,099,598).

16. On 23 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 property from 1 January 1987 to 31 December 2007. It produced a revised valuation report, which, on the basis of the criteria adopted in the previous report, concluded that the whole sum due for the loss of use was CYP 1,775,803, plus CYP 1,795,483 for interest. The total sum claimed under this head was thus CYP 3,571,287 (approximately EUR 6,101,900). The applicant also requested the additional amount of EUR 17,000 per month, to be adjusted in accordance with inflation for a period of 18 years or until the date on which the Turkish army will leave its possession vacant.

17. On 26 May 2010 the applicant produced another revised valuation report, which was meant to cover the loss of use for the period between 1 January 1987 and 30 June 2010. The expert appointed by the applicant considered that the whole sum due to his client for pecuniary damage was EUR 6,575,029.

18. The expert produced a synoptic table of “comparable sales within the area of Kato Kyrenia”, showing that in 1972-1973 four building sites had been sold at CYP 23.92, CYP 25.46, CYP 45.30 and CYP 70 per square metre. Only the most expensive building site had a location comparable to the applicant's property. The expert therefore assumed that the land on which the Rock Ruby Hotel was constructed had a 1974 market value of CYP 55 (approximately EUR 94) per square metre. As the plot had an extent of 1,989 square metres, its 1974 price was CYP 109,395 (approximately EUR 186,912). On the basis of a table of “average cost per square metre of dwellings in the private sector 1984-2008”, the expert considered that the cost of construction could be fixed at CYP 4,000 (approximately EUR 6,834) per room, inclusive of the common areas and furniture. As the hotel had 56 room, the overall cost of its construction was CYP 224,000 (approximately EUR 382,726). Applying a “development factor” of 1.25, he concluded that the overall 1974 market value of the property described in paragraph 13 above was CYP 417,000 (approximately EUR 712,486).

19. In its just satisfaction claims of 31 July 2002, the applicant claimed CYP 873,000 (approximately EUR 1,491,607) in respect of non-pecuniary damage. In particular, it claimed CYP 30,000 (approximately EUR 51,258) for the anguish and frustration suffered on account of the continuing violation of its property rights. It stated that this sum had been calculated on the basis of the sum awarded by the Court in the *Loizidou v. Turkey* case ((just satisfaction), 28 July 1998, *Reports of Judgments and Decisions* 1998-IV), taking into account, however, that the period of time for which the damage was claimed in the instant case was longer. The applicant also claimed CYP 843,000 (approximately EUR 1,440,349) for the violation of its rights under Article 14 of the Convention, which was aggravated by the fact that the Turkish army was using the hotel for its own purposes.

20. Finally, in its updated claims for just satisfaction of 23 January 2008, the applicant requested the additional sum of EUR 50,000 for non-pecuniary damage.

(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 property 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 property 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 property and its present value. The second proposal was made in order to give the applicant the option to sell the property 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 property 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 value) and increase in value of the property between 1974 and the date of payment. Had the applicant applied to the IPC, the latter would have offered CYP 292,145.54 (approximately EUR 499,159) to compensate the loss of use and CYP 311,174.61 (approximately EUR 531,672) for the value of the property. According to an expert appointed by the “TRNC” authorities, the 1974 open-market value of the applicant's hotel was CYP 50,847 (approximately EUR 86,877). Upon fulfilment of certain conditions, the IPC could also have offered the applicant exchange of its property with Turkish-Cypriot properties located in the south of the island.

24. 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 property “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.

25. 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).

26. 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.

27. 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”.

28. The report prepared by the Turkish-Cypriot authorities confirmed that it would be possible to envisage restitution of the property described in paragraph 13 above. Had the applicant applied to the IPC, the latter would have increased its offer up to CYP 334,137.41 (approximately EUR 570,907) to compensate the loss of use and up to CYP 340,623.89 (approximately EUR 581,990) for the value of the property. The expert appointed by the authorities of the “TRNC” also confirmed the 1974 open-market value of the applicant's property as indicated in paragraph 23 above.

29. 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*

30. 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 hotel in northern Cyprus (see paragraph 20 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 real estate since 1974, the applicant company had effectively lost all access and control

as well as all possibilities to use and enjoy its property (see paragraph 18 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).

31. In connection with this, the Court observes that the affirmation of ownership of Turkish-occupied immovable property produced by the applicant company (see paragraph 6 above) show that on 11 March 2010 it was still the owner of the hotel described in paragraph 13 above.

32. In that regard, the Court observes that 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 obtained from running its hotel 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 property that could have been earned during the relevant period (see *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 company (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 102, Series A no. 310, and (merits) 18 December 1996, § 32, *Reports* 1996-VI).

33. The Court notes that notwithstanding its request to submit material relevant to assessing the 1974 market value of the applicant's property, 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 26-27 above), while the applicant company has produced a synoptic table of "comparable sales within the area of Kato Kyrenia", showing that in 1972-1973 four building sites had been sold at CYP 23.92, CYP 25.46, CYP 45.30 and CYP 70 per square metre (see paragraph 18 above).

34. 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). Moreover, the Court does not see why the fact, claimed by the applicant (see paragraph 10 of the principal judgment and paragraph 16 above), that its hotel had been used by the Turkish army should give entitlement to an additional monthly sum.

35. 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).

36. 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).

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 6,575,029 and EUR 1,541,607 – see paragraphs 17 and 19-20 above) are manifestly excessive. At the same time, the amount which the “TRNC” authorities could have offered the applicant in respect of loss of use (EUR 570,907 – see paragraph 28 above) does not seem to take into due account the size and the nature of the hotel owned by the applicant and described in paragraph 13 above. It had 56 rooms with private bath or shower and veranda and was built on a plot of land facing the sea of a total area of 1,989 square metres. Making its assessment on an equitable basis, the Court decides to award the applicant company EUR 1,000,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

38. In its just satisfaction claims of 31 July 2002, relying on bills from its representative, the applicant company sought CYP 4,034.1 (approximately EUR 6,892) for the costs and expenses incurred before the

Court. This sum included CYP 800 (approximately EUR 1,366) for the costs of the expert report assessing the value of its hotel. On 15 January 2004, it claimed additional expenses amounting to CYP 2,645 (approximately EUR 4,519). In its updated claims for just satisfaction of 23 January 2008, the applicant company submitted additional bills of costs for the new valuation report and for legal fees amounting to EUR 392.15 and EUR 2,955.5 (including V.A.T.) respectively. It indicated that the overall sum claimed for cost and expenses was EUR 10,240.32 (including V.A.T.). Finally, on 26 May 2010 the applicant submitted that its further legal fees and expert report's costs amounted to EUR 1,000 and EUR 2,955 respectively.

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 valuation reports 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).

42. 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

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 1,000,000 (one million 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