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

FOURTH SECTION

CASE OF IORDANIS IORDANOU v. TURKEY

(Application no. 43685/98)

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 Iordanis Iordanou 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. 43685/98) 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 Iordanis Iordanou (“the applicant”), on 15 September 1998.

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 continuing violations of Article 8 of the Convention by reason of the complete denial of the right of the applicant to respect for his home and 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 complaint under Article 14 of the Convention (*Iordanis Iordanou v. Turkey*, no. 43685/98, §§ 13, 22, 30 and 32 and points 1-4 of the operative provisions, 22 September 2009).

3. Under Article 41 of the Convention the applicant sought just satisfaction of 1,574,166 Cypriot pounds (CYP – approximately 2,689,620 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 31 December 2007. Two valuation reports, setting out the basis of the applicant's loss, were appended to his observations. Furthermore, the applicant claimed approximately EUR 439,560 in respect of non-pecuniary damage and approximately EUR 20,041 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., §§ 52 and 55, and point 5 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 26 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 29 March 2010 the properties described in paragraph 13 (a), (b), (c), (d) and (e) 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 his 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 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 30 August 2002, the applicant requested CYP 870,000 (approximately EUR 1,486,482) 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 properties, 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 1 January 2003. The applicant did not claim compensation for any purported expropriation since he was still the legal owner of the properties. The valuation report contained a description

of Karavas village and of the applicant's properties. The latter consisted of two houses, three fields and one source of running water. They were registered as follows (see paragraphs 8, 9 and 10 of the principal judgment):

(a) plots nos. 268 and 269, sheet/plan XI/16W1 and 8W2, house consisting of three ground floor rooms, two basement rooms, one kitchen, two wells, one turbine water pump and one water storage tank, registered in the name of the applicant by virtue of registration no. 5725;

(b) plots nos. 20 and 21/3, sheet/plan XI/16W2.E1, house consisting of three ground floor rooms, one room upstairs, two wells, one electric water pump and one water storage pump, registered in the name of the applicant by virtue of registration no. 5678 of 23 January 1970;

(c) plot no. 273, sheet/plan XI/16W1, field with lemon groves of a total extent of 6,355 m², registered in the name of the applicant by virtue of registration no. 151 of 23 March 1956;

(d) plot no. 25, sheet/plan XII/18W1, field with carob and olive trees of a total extent of 11,372 m², registered in the name of the applicant by virtue of registration no. 4091 of 16 April 1957;

(e) plots nos. 76 and 79, sheet/plan XII/18W1, field with carob and olive trees of a total extent of 35,452 m², registered in the name of the applicant by virtue of registration no. 4269 of 23 January 1970;

(f) plot no. 140, sheet/plan XI/24W2, source of running water, registered for the 1/224 share in the name of the applicant.

14. The starting point of the valuation report was the rental value of the applicant's properties in 1974, calculated as a percentage (varying from 4 to 6%) of their 1974 open market value. The houses owned by the applicant (see paragraphs 13 (a) and (b) above) were of about 120 and 100 m² respectively. According to the expert, in 1974 their market value, together with the land annexed to them, could be estimated at CYP 20,500 (approximately EUR 35,026) and CYP 29,000 (approximately EUR 49,549). The plots of land described under paragraph 13 (c), (d) and (e) above had a 1974 market value of CYP 50,000 (approximately EUR 85,430), 51,000 (approximately EUR 87,138) and 53,000 (approximately EUR 90,555) respectively. The market value of the applicant's share in the natural water spring (see paragraph 13 (f) above) was estimated at CYP 2,700 (approximately EUR 4,613).

15. The rents were subsequently adjusted upwards according to an annual increase of 5 % and compound interest for delayed payment was applied at a rate of 8 % per annum.

16. 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. He 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 694,827 plus CYP 879,339 for interest. The total sum claimed under this head was thus CYP 1,574,166 (approximately EUR 2,689,620).

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 3,585,248.

18. In his just satisfaction claims of 30 August 2002, the applicant further claimed CYP 228,000 (approximately EUR 389,560) in respect of non-pecuniary damage. In particular, he claimed CYP 38,000 (approximately EUR 64,926) for the anguish and frustration he suffered on account of the continuing violation of his property rights. He 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 114,000 (approximately EUR 194,780) for the distress and suffering he had been subjected to due to the denial of his right to respect for his home, and CYP 76,000 (approximately EUR 129,853) for the violation of his rights under Article 14 of the Convention.

19. Finally, in his updated claims for just satisfaction of 24 January 2008, the applicant requested the additional sum of EUR 50,000 for non-pecuniary damages.

(b) The Government

20. In reply to the applicant's just satisfaction claims of 30 August 2002, the Government challenged the conclusions reached by the Court in the *Loizidou* case ((just satisfaction), cited above) and considered that in cases such as the present one, no award should be made by the Court under Article 41 of the Convention. They underlined that the applicant's inability to have access to his properties depended on the political situation in Cyprus and, in particular, on the existence of the UN recognised cease-fire lines. If Greek-Cypriots were allowed to go to the north and claim their properties, chaos would explode on the island; furthermore, any award made by the Court would undermine the negotiations between the two parties.

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 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.

22. 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.

23. 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.

24. The report prepared by the Turkish-Cypriot authorities specified that the immovable properties referred to in the application were possessed by refugees; they could not, therefore, form the object of restitution, but could give entitlement to 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 175,666.13 (approximately EUR 300,143) to compensate the loss of use and CYP 187,113.57 (approximately EUR 319,702) 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:

– house described in paragraph 13 (a) above: CYP 1,500 (approximately EUR 2,562);

– house described in paragraph 13 (b) above: CYP 5,500 (approximately EUR 9,397);

– field described in paragraph 13 (c) above: CYP 7,125 (approximately EUR 12,173);

– field described in paragraph 13 (d) above: CYP 8,500 (approximately EUR 14,523);

– field described in paragraph 13 (e) above: CYP 7,950 (approximately EUR 13,583).

No estimate was given for the source of running water described in paragraph 13 (f) above.

25. 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.

26. 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.

27. 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).

28. 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.

29. 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".

30. The report prepared by the Turkish-Cypriot authorities confirmed that it would not be possible to envisage, either immediately or after the resolution of the Cyprus problem, restitution of the properties described in paragraph 13 above, which were possessed by refugees. Had the applicant applied to the IPC, the latter would have increased its offer up to CYP 200,921.42 (approximately EUR 343,294) to compensate the loss of use and up to CYP 204,821.82 (approximately EUR 349,958) 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 24 above.

31. 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

32. The Court recalls that it has concluded that there had been a continuing violation of the applicant's rights guaranteed by Article 8 of the Convention and Article 1 of Protocol No. 1 by reason of the complete denial of the rights of the applicant with respect to his home and the peaceful enjoyment of his properties in northern Cyprus (see paragraphs 30 and 22 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 and real estate since 1974, the applicant had effectively lost all access and control as well as all possibilities to use and enjoy his properties (see paragraph 20 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).

33. In connection with this, the Court observes that the affirmations of ownership of Turkish-occupied immovable properties produced by the applicant (see paragraph 6 above) show that on 29 March 2010 he was still the owner of the properties described in paragraph 13 (a), (b), (c), (d) and (e) above. It is true that the applicant failed to produce evidence of current ownership over the 1/224 share in the source of running water described in paragraph 13 (f) above. However, having regard to the relatively modest economic value of the share at issue, the Court considers that such evidence is not indispensible for deciding over the question of just satisfaction.

34. 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), cited above, § 31). 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 (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 (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 102, Series A no. 310, and (merits) 18 December 1996, § 32, *Reports* 1996-VI).

35. 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 23 and 28-29 above), while the applicant failed to provide any relevant data.

36. 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).

37. 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 and to enjoy his home (see *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 3,585,248 and EUR 439,560 – see paragraphs 17 and 18-19 above) are manifestly excessive. It considers that the amount which, according to the Government, the IPC could have offered the applicant in respect of loss of use (approximately EUR 343,294 – see paragraph 30 above) constitutes a fair basis for compensating the damage sustained by Mr Iordanou. It recalls that his properties consisted in two houses (of 120 and 100 square metres), 1/224 share in a source of running water and three fields of a total area of 53,179 square metres (see paragraph 13 above). Making its assessment on an equitable basis, the Court decides to award the applicant EUR 350,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

39. In his just satisfaction claims of 30 August 2002, relying on bills from his representative, the applicant sought CYP 4,621.6 (approximately EUR 7,896) for the costs and expenses incurred before the Court. This sum

included CYP 2,000 (approximately EUR 3,417) for the costs of the expert report assessing the value of his properties. On 25 November 2002, the applicant submitted additional bills of costs from his lawyer, amounting to CYP 734.5 (approximately EUR 1,254). On 15 January 2004, he claimed additional expenses amounting to CYP 2,645 (approximately EUR 4,519). In his updated claims for just satisfaction of 24 January 2008, the applicant submitted additional bills of costs for the new valuation report and for legal fees amounting to CYP 2,000 (approximately EUR 3,417) plus V.A.T. and EUR 2,955.5 (including V.A.T.) respectively. The total sum claimed under this head was thus approximately EUR 20,041. Finally, on 26 May 2010 the applicant submitted that his further legal fees and expert report's costs amounted to EUR 2,955.5 and EUR 10,250 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 valuation reports in view of the continuing nature of the violations 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 350,000 (three hundred and fifty 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	Nicolas Bratza
Deputy Registrar	President