



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

FOURTH SECTION

CASE OF HADJITHOMAS AND OTHERS v. TURKEY

(Application no. 39970/98)

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 Hadjithomas and Others 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. 39970/98) 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 nine Cypriot nationals, Mr Thomas George Hadjithomas, Mrs Ioulia Yioupa Hadjithoma, Mrs Paraskevi Hadjithoma-Hapeshi, Mr Nicos Thomas Hadjithomas, Mrs Xanthi Antoniou-Hadjithoma, Mr Thomas Hadjithomas, Mr Christoforos Hadjithomas, Mr Andreas Hadjithomas and Savvas Hadjithoma (“the applicants”), on 2 February 1998.

2. In a judgment delivered on 22 September 2009 (“the principal judgment”), the Court held that the second, third, fourth, fifth, sixth, seventh, eight and ninth applicants had standing to continue the proceedings also in the first applicant's stead, 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 first, second, third and fourth applicants to respect for their home and of Article 1 of Protocol No. 1 to the Convention by virtue of the fact that all the applicants were denied access to and control, use and enjoyment of their properties as well as any compensation for the interference with their property rights. Furthermore, it found that there had been no violation of Article 8 of the Convention with respect to the fifth, sixth, seventh, eight and ninth applicants and that it was not necessary to examine the applicants' complaint under Article 14 of the Convention (*Hadjithomas and Others v. Turkey*, no. 39970/98, §§ 15, 22, 23, 34, 44, and 46, and points 1-6 of the operative provisions, 22 September 2009).

3. Under Article 41 of the Convention the applicants sought just satisfaction of 2,056,149 Cypriot pounds (CYP – approximately 3,513,136 euros (EUR)) for the deprivation of their 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 applicants' loss, were appended to their observations. Furthermore, the applicants claimed at least EUR 170,860 each in respect of non-pecuniary damage and approximately EUR 17,276 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 applicants 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.*, §§ 60 and 63, and point 6 of the operative provisions).

5. On 4 March 2010 the Court invited the applicants 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 applicants were moreover invited to submit written evidence that the properties at stake were still registered in their name or to indicate and substantiate any transfer of ownership which might have taken place.

6. The applicants and the Government each filed observations on these matters. On 28 May 2010 the applicants 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 May 2010 a share in the properties described in paragraph 13 below were registered in the name of the applicants and/or in the name of the late father of the sixth, seventh, eighth and ninth applicants (see paragraphs 9 and 11 of the principal judgment).

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 applicants' 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 applicants should address their 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 applicants were 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 23 of the principal judgment and point 2 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 applicants' 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 applicants**

13. In their just satisfaction claims of 21 April 2000, the applicants requested CYP 820,719 (approximately EUR 1,402,280) in respect of pecuniary damage. They relied on an expert's report assessing the value of their losses which included the loss of annual rent collected or expected to be collected from renting out their properties, plus interest from the date on which such rents were due until the date 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 September 1999. The applicants did not claim compensation for any purported expropriation since they were still the legal owners of the properties. The valuation report contained a description of the villages of Ayios Amvrosios, Klepini and Chartzia, of their development perspectives and of the applicants' properties. The latter included various shares in 33 plots of land; the family house (registered under no. 10920, plot no. 40-41-476/2); a garden; a non-descript “site”; a “ruined room”; a “ruined mill with one room”; and an orchard with 12 mulberry trees (see paragraph 11 of the principal judgment). The land owned by the applicants had a total extent approaching 200,000 square metres.

14. The expert classified the properties into two broad categories: those with prospects and potential for immediate development and those whose immediate or foreseeable prospects were limited to agricultural use. For the first category of properties, the ground rent was calculated as a percentage (varying from 4% to 6%) of their market value; for the second category the rent obtainable in 1974 was calculated on the basis of the rent payable for similar agricultural lands (between CYP 2 and 5 per decare per annum for standard plots and between CYP 25 and 35 per decare per annum for groves). According to the expert, the 1974 market value of the applicants' house was CYP 19,000 (approximately EUR 32,463) and the annual rent obtainable from it was CYP 760 (approximately EUR 1,298). Other

properties had a market value ranging from CYP 19,991 to CYP 940. Their total 1974 rental value was estimated at CYP 5,028.55 (approximately EUR 8,591). The following annual increases were applied: 12 % for ground rents, 7 % for agricultural properties and 5% for groves and houses. Moreover, compound interest for delayed payment was applied at a rate of 8 % per annum.

15. On 25 January 2008, following a request from the Court for an update on developments in the case, the applicants submitted updated claims for just satisfaction, which were meant to cover the period of loss of use of the properties from 1 January 1987 to 31 December 2007. They 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 1,135,126 plus CYP 921,023 for interest. The total sum claimed under this head was thus CYP 2,056,149 (approximately EUR 3,513,136).

16. On 28 May 2010 the applicants 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 applicants considered that the whole sum due to his clients for pecuniary damage was EUR 4,807,021.

17. The expert referred to a judgment of the Kyrenia District Court, given on 6 July 1973, concerning compensation in respect of land acquisitions which had taken place in February 1970. It transpired from this judgment that the values of land located in Ayios Amvrosios at the relevant time were between CYP 560 (approximately EUR 956) and CYP 1,120 (approximately EUR 1,913) per decare and that the land values had had a 20 % annual increase. He moreover submitted a list of sales of comparable properties in the Kyrenia District, showing that at dates close to the Turkish invasion the value of building sites was between CYP 20.08 (approximately EUR 34) and CYP 25.46 (approximately EUR 89) per square metre, while fields and fields with trees were sold at a price comprised between CYP 0.56 (approximately EUR 0.95) and CYP 2.24 (approximately EUR 3.82) per square metre.

18. In their just satisfaction claims of 21 April 2000, the applicants further claimed compensation in respect of non-pecuniary damage. They left it to the Court's discretion to determine the amount, noting, however, that they considered the sum of CYP 100,000 (approximately EUR 170,860) for each of them hardly sufficient.

(b) The Government

19. The Government filed comments on the applicants' 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.

20. The Government further 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 a comparison could be drawn 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 applicants had instead proceeded on the assumption that the property market would have continued to flourish with sustained growth during the whole period under consideration.

21. 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 applicants the option to sell the properties to the State, thereby relinquishing title to and claims in respect of them.

22. 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 most of the properties described in paragraph 13 above, including the applicants' house. The other immovable property referred to in the application was possessed by refugees; it could not 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 applicants applied to the IPC, the latter would have offered CYP 191,757.61 (approximately EUR 327,637) to compensate for the loss of use from January 1996 (when the first applicant transferred part of his properties to the third and fourth applicants – see paragraphs 11 and 20 of the principal judgment) onwards and CYP 310,872.77 (approximately EUR 531,157) for the value of the properties. According to an expert appointed by the authorities of the “TRNC”, the 1974 open-market value of the applicants' house was CYP 4,661.02 (approximately EUR 7,963). Upon fulfilment of certain conditions, the IPC could also have offered the applicants an

exchange of their properties with Turkish-Cypriot properties located in the south of the island.

23. 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 applicants 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.

24. 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).

25. 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.

26. 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”.

27. The report prepared by the Turkish-Cypriot authorities confirmed that it would be possible to envisage restitution of the applicants' house and of 31 plots of land belonging to them. Had the applicants applied to the IPC, the latter would have increased its offer up to CYP 473,588.61 (approximately EUR 809,173) to compensate the loss of use and up to CYP 686,082.73 (approximately EUR 1,172,241) for the value of the properties. According to an expert appointed by the authorities of the “TRNC”, the 1974 open-market value of all the applicants' properties was CYP 102,445.45 (approximately EUR 175,055). The Government noted that only the first applicant was the owner of the properties in 1974 and that he had transferred them to two of the other applicants on 12 January 1996

(see paragraph 11 of the principal judgment). Therefore, the loss of income had been calculated from January 1996 onwards.

28. 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*

29. The Court recalls that it has concluded that there had been a continuing violation of the applicants' rights guaranteed by Article 1 of Protocol No. 1 by reason of the complete denial of the right of the applicants to the peaceful enjoyment of their properties in northern Cyprus (see paragraph 34 of the principal judgment). There had also been a continuing violation of Article 8 of the Convention by reason of the denial of the right of the first, second, third and fourth applicants to respect for their home (see paragraph 44 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 their land and real estate since 1974, the applicants had effectively lost all access and control as well as all possibilities to use and enjoy their properties (see paragraph 32 of the principal judgment). They are therefore entitled to a measure of compensation in respect of losses directly related to this violation of their 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).

30. In connection with this, the Court notes that in 1974 the first applicant was the owner of all the properties concerned by the principal judgment (see paragraph 20 of the principal judgment) and that the other applicants had been authorised to pursue the application initially brought by him (see paragraph 15 of the principal judgment and point 1 of its operative provisions as well as paragraph 2 above). Moreover, the affirmations of ownership of Turkish-occupied immovable properties produced by the applicants (see paragraph 6 above) show that in May 2010 the properties described in paragraph 13 above were registered in the name of the applicants and/or in the name of the late father of the sixth, seventh, eighth and ninth applicants.

31. In the opinion of the Court, the valuations furnished by the applicants 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 v. Turkey* (just satisfaction), 28 July 1998, *Reports of Judgments and Decisions* 1998-IV). Accordingly, in assessing the pecuniary damage sustained by the applicants,

the Court has, as far as appropriate, considered the estimates provided by them (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 applicants 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 applicants (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 102, Series A no. 310, and (merits) 18 December 1996, § 32, *Reports* 1996-VI).

32. The Court notes that notwithstanding its request to submit material relevant to assessing the 1974 market value of the applicants' properties, the parties have produced few elements in this respect. The Government have relied on the accuracy of the IPC's calculations (see paragraphs 21 and 25-26 above), while the applicants have referred to the sale, in 1970, of comparable land. According to their expert's assessment, this sale showed that at the relevant time the market price of land located in Ayios Amvrosios was between EUR 956 and EUR 1,913 per decare, which is between EUR 0.956 and EUR 1.913 per square metre. The applicants also produced a synoptic table showing that at a time close to the Turkish invasion building sites and fields had been sold for a price comprised between EUR 34 and EUR 89 and between EUR 0.95 and EUR 3.82 per square metre respectively (see paragraph 17 above).

33. The Court further observes that the applicants 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 applicants, it finds that the rates applied by them are on the high side (see, *mutatis mutandis*, *Demades* (just satisfaction), cited above, § 24).

34. 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 applicants must have experienced over the years in not being able to use their properties as they saw fit and to enjoy their homes (see *Demades* (just satisfaction), cited above, § 29, and *Xenides-Arestis* (just satisfaction), cited above, § 47).

35. Having regard to the above considerations, the Court is of the opinion that the sums claimed by the applicants in respect of pecuniary and non-pecuniary damage (respectively EUR 4,807,021 and EUR 1,537,740 – see paragraphs 16 and 18 above) are manifestly excessive. It considers that the amount which, according to the Government, the “TRNC” authorities could have offered in respect of loss of use (the global sum of EUR 809,173

– see paragraph 27 above) could constitute a fair basis for compensating the damages sustained by the applicants. It recalls that their properties consisted in one house, 33 plots of land, one garden, one “site”, one “ruined room”, one “ruined mill with one room” and one orchard; according to the certificates provided by the applicants (see paragraph 6 above), their land had a total extent approaching 200,000 square metres (see paragraph 13 above). However, as indicated by the Government, the IPC has calculated the loss of income from January 1996 onwards (see paragraph 27 *in fine* above), and not from 22 January 1987 until the present time (see paragraphs 29 and 30 above). Making its assessment on an equitable basis, the Court decides to award the applicants EUR 1,000,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

36. In their just satisfaction claims of 21 April 2000, relying on bills from their representative, the applicants sought CYP 4,250 (approximately EUR 7,261) and 1,750 pounds sterling (approximately EUR 2,110) for the costs and expenses incurred before the Court. They further claimed CYP 3,000 (approximately EUR 5,125) for the expenses pertaining to the valuation report. They stated that they had received legal aid in the amount of 4,100 French Francs (approximately EUR 625). In their updated claims for just satisfaction of 25 January 2008, the applicants submitted additional bills of costs for the new valuation report and for legal fees amounting to EUR 690 and EUR 2,000 respectively. The total sum sought for cost and expenses was thus approximately EUR 17,186. Finally, on 28 May 2010 the applicants submitted that their further legal fees and expert report's costs amounted to EUR 1,400 and EUR 11,500 respectively.

37. The Government did not comment on this point.

38. 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).

39. 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).

40. 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. Taking into account the sum

received by the applicants by way of legal aid (approximately EUR 625), it decides to award EUR 7,375 under this head.

C. Default interest

41. 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 applicants' claims for just satisfaction;
2. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 7,375 (seven thousand three hundred and seventy-five euros), plus any tax that may be chargeable to the applicants, 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 applicants' 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