

FOURTH SECTION

CASE OF RAMON v. TURKEY

(Application no. 29092/95)

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 Ramon 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. 29092/95) 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 Dinos Ramon (“the applicant”), on 4 September 1995.

2. In a judgment delivered on 22 September 2009 (“the principal judgment”), the Court dismissed various preliminary objections raised by the Turkish Government and found a continuing violation of Article 1 of Protocol No. 1 to the Convention by virtue of the fact that the applicant was denied access to and control, use and enjoyment of his property 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 8 of the Convention (*Ramon v. Turkey*, no. 29092/95, §§ 11, 23 and 28 and points 1-3 of the operative provisions, 22 September 2009).

3. Under Article 41 of the Convention the applicant sought just satisfaction of 2,332,269 Cypriot pounds (CYP – approximately 3,984,914 euros (EUR)) for the deprivation of his property 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 255,032 in respect of non-pecuniary damage and approximately EUR 11,925 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.*, §§ 43 and 46, 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 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 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 12 March 2010 the property described in paragraph 13 below was registered partly in the name of the applicant, partly in the name of the Bogazi Improvement Board, with whom the applicant had entered into a contract of sale.

THE LAW

I. PRELIMINARY ISSUE

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

8. The Court first observes that the Government's submissions were unsolicited; they were received by the Registry long after the expiration of the time-limit for filing comments on just satisfaction and almost two months after the delivery of the Grand Chamber's decision in *Demopoulos*. It could therefore be held that the Government are estopped from raising the matter at this stage of the proceedings.

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

10. Furthermore, the Court considers that its previous finding in the present case that the applicant was not required to exhaust the remedy introduced by Law 67/2005 constitutes *res judicata*. It recalls that after the compensation mechanism before the IPC was introduced, the Government raised an objection based on non-exhaustion of domestic remedies. This objection was rejected in the principal judgment (see paragraph 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 his just satisfaction claims of November 1999, the applicant requested CYP 790,528 (approximately EUR 1,350,696) 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 clinic, 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 January 2000. The applicant did not claim

compensation for any purported expropriation since he was still the legal owner of the property. The evaluation report contained a description of the Boghaz village, of its development perspectives and of the applicant's property. The latter consisted of a plot of land registered under sheet/plan 15/28 E.1, Block E, Boghaz Village, Famagusta, Ayios Spyridon locality; it had a surface of 8,947 square metres (see paragraph 9 of the principal judgment). The applicant alleged that by August 1974 he had nearly finished the construction of a clinic/health centre on this plot of land. The clinic had 32 rooms with private balconies, a restaurant, a lecture room, a library and a swimming pool (see paragraph 10 of the principal judgment).

14. The expert appointed by the applicant observed that in August 1974 the clinic was in the final stage of completion and that the building materials had been purchased by the owner and were *in situ*. Therefore, the valuation was based on the assumption that the building was completed. The report calculated the annual rent obtainable from the applicant's property in 1974. As the clinic was not yet operating, it used a comparative method based on the evidence available for an alternative use of the premises, namely as a three star hotel, taking into consideration the attractiveness of a chiropractic centre.

15. According to the expert, a hotel similar to the applicant's property could have obtained an average sum of CYP 45 (approximately EUR 76) per room per month. He then deducted 20 % from this amount in order to take into account the expenses for furniture and equipment. As the applicant's clinic had 32 rooms, its total rental value in August 1974 was CYP 13,824 (approximately EUR 23,619). The expert further took into account the trends in rent increase on the basis of: (a) the nature of the area of property; (b) the trends for the period 1970-1974 in similar areas; (c) the trends in the unoccupied areas of Cyprus from 1974 onwards. This last trend was based on the Consumer Price Index for rents and houses issued by the Department of Statistics and Research of the Government of Cyprus. Moreover, 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 property 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 1,159,708.36 plus CYP 1,172,560.43 for interest. The total sum claimed under this head was thus CYP 2,332,269 (approximately EUR 3,984,914).

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 4,293,896.

18. The valuation report stated that the applicant had bought the land on which the clinic was erected on 1 August 1972 for the price of CYP 0.748 (approximately EUR 1.27) per square metre. Assuming a 25 % annual increase, the expert fixed the 1974 price at CYP 1.169 (approximately EUR 2) per square metre. As the land at issue had a surface area of 8,847 square metres, its total 1974 value was CYP 10,342 (approximately EUR 17,670). Using as a starting point a table on “average cost per square metre of dwellings in the private sector 1984-2008”, the expert further assumed that the cost of construction was CYP 5,500 (approximately EUR 9,397) per room (including common areas), and thus a total of CYP 176,000 (approximately EUR 300,713). Applying a “development factor” of 1.20, he concluded that the 1974 market value of the clinic and of the land on which it was erected could be fixed at CYP 225,000 (approximately EUR 384,435). The applicant's expert also referred to a “comparable sale” in Bogazi village, showing that on 25 May 1972 a field of 19,593 square metres was sold for CYP 28,000 (approximately EUR 47,840).

19. In his just satisfaction claims of November 1999, the applicant further claimed CYP 120,000 (approximately EUR 205,032) in respect of non-pecuniary damage. In particular, he claimed CYP 30,000 (approximately EUR 51,258) 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* ((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.

20. 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 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 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 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 the immovable property referred to in the application was a forest land; it 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 value) and increase in value of the property between 1974 and the date of payment. However, as a forest land was public property, it had not been possible to estimate its value. Upon fulfilment of certain conditions, the IPC could have offered the applicant exchange of his 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 property; 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 property 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 not be possible to envisage restitution of the property described in paragraph 13 above. Had the applicant applied to the IPC, the latter would have offered CYP 262,857.13 (approximately EUR 449,117) to compensate the loss of use and CYP 267,959.87 (approximately EUR 457,836) for the value of the property. According to an expert appointed by the authorities of the “TRNC”, the 1974 open-market value of the latter was CYP 40,000 (approximately EUR 68,344).

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 right of the applicant to the peaceful enjoyment of his property in northern Cyprus (see paragraph 23 of the principal judgment). Furthermore, its finding of a violation of Article 1 of Protocol No. 1 was based on the fact that, as a consequence of being continuously denied access to his land since 1974, the applicant had effectively lost all access and control as well as all possibilities to use and enjoy his property (see paragraph 21 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 *Cankocak 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 (see paragraph 6 above) shows that on 12 March 2010 he and his contractual counterpart (the Bogazi Improvement Board) were still the owners of the property described in paragraph 13 above. It is also to be recalled that in the principal judgment the Court has held that, having

concluded a sale agreement and having paid the price for purchasing the land, the applicant had a legitimate expectation that a title deed would be issued in his name, and therefore a “possession” within the meaning of Article 1 of Protocol No. 1 (see paragraph 19 of the principal judgment).

32. 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), § 31, *Reports of Judgments and Decisions* 1998-IV, 28 July 1998). An even higher degree of speculation is involved in calculating the profits which the applicant could have earned by running his clinic/health centre, a structure which had not been completed and in which no established course of business was being carried on at the time of the Turkish invasion. 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 property, that could have been earned during the relevant period (*Loizidou* (just satisfaction), cited above, § 33, and *Demades* (just satisfaction), cited above, § 23). Furthermore, the Court has taken into account the uncertainties, inherent in any attempt to quantify the real losses incurred by the applicant (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 102, Series A no. 310, and (merits) 18 December 1996, § 32, *Reports* 1996-VI).

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 has referred to a “comparable sale” in Bogazi (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, it finds that the rates applied by him are on the high side (see, *mutatis mutandis*, *Demades* (just satisfaction), cited above, § 24).

35. 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 property as he saw fit (see *Demades* (just satisfaction), cited above, § 29, and *Xenides-Arestis* (just satisfaction), cited above, § 47).

36. 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 4,293,896 and EUR 255,032 – see paragraphs 17 and 19-20 above) are manifestly excessive. It notes that at the time of the Turkish invasion the works for the construction of the applicant's clinic had not been terminated and the procedure for parcelling the plot had not been completed (see paragraph 9 of the principal judgment). Moreover, according to the applicant's expert, two years before the Turkish invasion the plot of land on which the clinic should have been erected had been bought for CYP 0.748 per square metre, thus a total price of approximately EUR 11,434 (see paragraph 18 above). The Court considers that the amount which, according to the Government, the IPC could have offered the applicant in respect of loss of use (approximately EUR 449,117 – see paragraph 28 above) constitutes a fair basis for compensating the damage sustained by Mr Ramon. It recalls that his property consisted in a plot of constructible land of a total area of 8,947 square metres (see paragraph 13 above). Making its assessment on an equitable basis, the Court decides to award the applicant EUR 450,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

37. In his just satisfaction claims of November 1999, relying on bills from his representative, the applicant sought CYP 2,376 (approximately EUR 4,059) for the costs and expenses incurred before the Court. This sum included CYP 600 (approximately EUR 1,025) for the costs of the expert report assessing the value of his property. In his written observations of 15 January 2004, the applicant claimed additional legal fees for CYP 2,645 (approximately EUR 4,519). In his updated claims for just satisfaction of 24 January 2008, he submitted additional bills of costs for the new valuation report and for legal fees amounting to EUR 392.15 and EUR 2,955.5 respectively. The total sum sought for cost and expenses was thus approximately EUR 11,925. 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 1,000 respectively.

38. The Government did not comment on this point.

39. 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).

40. 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 updated

valuation reports in view of the continuing nature of the violation at stake were essential for enabling the Court to reach its decision regarding the issue of just satisfaction (see *Demades v. Turkey* (just satisfaction), cited above, § 34).

41. 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 the total sum of EUR 8,000.

C. Default interest

42. 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 450,000 (four 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
Deputy Registrar

Nicolas Bratza
President