



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

FOURTH SECTION

CASE OF ANDREOU PAPI v. TURKEY

(Application no. 16094/90)

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 Andreou Papi 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. 16094/90) 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, Mrs Despo Andreou Papi (“the applicant”), on 16 January 1990.

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 her properties as well as any compensation for the interference with her property rights. Furthermore, it found that it was not necessary to examine the applicant's complaints under Article 8 of the Convention and under Article 14 of the Convention read in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1. Finally, it held that there had been no violation of Articles 3, 5, 6, 7, 11, 13 and 14 of the Convention, read in conjunction with Articles 5, 6 and 7 (*Andreou Papi v. Turkey*, no. 16094/90, §§ 38, 50, 54, 56, 69, 83, 97, 104, 116, 124 and 130, and points 1-10 of the operative provisions, 22 September 2009).

3. Under Article 41 of the Convention the applicant sought just satisfaction of 81,899 Cypriot pounds (CYP – approximately 139,932 euros (EUR)) for the deprivation of her properties concerning the period between January 1987, when the respondent Government accepted the right of individual petition, and 2000. A valuation report, setting out the basis of the applicant's loss, was appended to her observations. Furthermore, the

applicant claimed CYP 140,000 (approximately EUR 239,204) in respect of non-pecuniary damage and approximately EUR 12,302 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.*, §§ 142 and 145, and point 11 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 her 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 21 June 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 28 April 2010 the properties described in paragraph 14 (b) below were registered in the name of “Despo Papi”.

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 her 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 38 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 her just satisfaction claims of December 2002, the applicant requested CYP 81,899 (approximately EUR 139,932) for pecuniary damage. She relied on an expert's report (provided by the Department of Lands and Surveys of the Republic of Cyprus) assessing the value of her losses which included the loss of annual rent collected or expected to be collected from renting out her 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 2000. The applicant did not claim compensation for any purported expropriation since she was still the legal owner of the properties. The valuation report contained a description of the town of Famagusta and of the Kato Dherynia village, where the applicant's properties were situated.

14. The latter consisted of:

(a) a building site under subdivision (registered as follows: Kato Dherynia, provisional no. 19, D/959, share: whole – see paragraph 10 of the principal judgment);

(b) real estate transferred to the applicant by way of gift from her husband on 28 June 2000 (Famagusta, Chrysi Akti, plot no. 778, block C, sheet/plan 33/21.1.IV, description: buildings with house, yard and shop on ground floor and house on the first floor; use: residence; area of the houses: 115 m² each; share: $\frac{3}{4}$ – see paragraph 8 of the principal judgment).

15. The starting point of the valuation was the annual rental value of the applicant's share in the properties in 1974 (CYP 357 – approximately EUR 610), calculated on the basis of a percentage (varying between 4% and 6%) of their market value (CYP 15,685 – approximately EUR 26,799). This sum was subsequently adjusted upwards according to an average annual rental increase of 5.5%. Compound interest for delayed payment was applied at a rate of 8% per annum.

16. In a letter of 28 January 2008 the applicant observed that a long period had passed since her first claims for just satisfaction and that the claim for pecuniary loss needed to be updated according to data concerning the increase of market value of land in Cyprus. The average increase in this respect was 10% to 15% per annum.

17. On 21 June 2010 the applicant produced a revised valuation report, which was meant to cover the loss of use for the period between 1 January 1987 and 30 June 2010 for the property described in paragraph 14 (a) above and between 1 January 1987 and 28 June 2000 for the property described in paragraph 14 (b) above. On the basis of the criteria used in the previous report, the expert appointed by the applicant considered that the whole sum due to his client for pecuniary damage was EUR 395,234.

18. The expert produced a synoptic table of “comparable sales for properties in Famagusta town”, showing the in the period 1969-1973 building sites were sold at sums comprised between CYP 15.69 (approximately EUR 26.80) and CYP 32.26 (approximately EUR 55.11) per square metre, while in 1973 two fields had a price of CYP 44.44 (approximately EUR 75.93) and CYP 48.89 (approximately EUR 83.53) per square metre. Moreover, in 1973 and 1974 two building sites in Dherynia were sold for CYP 8.93 (approximately EUR 15.25) and CYP 8.73 (approximately EUR 14.91) per square metre. In 1973 three apartments

located in Nicosia had market prices of CYP 106 (approximately EUR 181), CYP 116 (approximately EUR 198) and CYP 130 (approximately EUR 222) per square metre. The expert finally underlined that in the period 1973-2008 apartments in the unoccupied areas of Greater Nicosia had an average annual increase in capital value of 8% per annum. The average annual increase of land in the same period was of 14.75%.

19. In her just satisfaction claims of December 2002, the applicant further claimed CYP 80,000 (approximately 136,688 EUR) in respect of non-pecuniary damage for the violations of her rights under Articles 8 of the Convention and 1 of Protocol No. 1. She further claimed CYP 60,000 (approximately EUR 102,516) in respect of the moral damage suffered for the other violations.

(b) The Government

20. In reply to the applicant's just satisfaction claims of December 2002, the Government submitted that the issue of reciprocal compensation for Greek-Cypriot property left in the north of the island and Turkish-Cypriot property left in the south was very complex and should be settled through negotiations between the two sides under the auspices of the UN, rather than by adjudication by the European Court of Human Rights, acting as a first-instance tribunal and relying on the reports produced by the applicant side only. They referred, on this point, to the UN plan entitled "Basis for agreement on a comprehensive settlement of the Cyprus problem", in its revised version of 10 December 2002.

21. Challenging the conclusions reached by the Court in the *Loizidou v. Turkey* case ((just satisfaction), 28 July 1998, *Reports of Judgments and Decisions* 1998-IV), the Government 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 her properties depended on the political situation in Cyprus and, in particular, on the existence of the UN recognized 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.

22. Moreover, Turkey had no access to the lands office records of the "TRNC", which were outside its jurisdiction and control. It was therefore not in a position to have sufficient knowledge about the possession and/or ownership of the alleged properties in 1974 or to know their market values and reasonable rents at the relevant time. The estimations put forward by the applicant were speculative and hypothetical, as they were not based on real data and did not take into consideration the volatility of the property market and its susceptibility to be influenced by the domestic situation in Cyprus. During the last 28 years, the landscape in Cyprus had considerably changed and so had the status of the applicant's properties.

23. It was also to be noted that in the present application the estimations had not been provided by an independent expert, but by the Department of Lands and Surveys of the Republic of Cyprus, that is to say by a branch of an interested party which had intervened in the proceedings before the Court. In any event, Turkey could not be held liable in international law for the acts of the “TRNC” expropriating the applicant's properties, as it could not legislate to make reparation for these acts. The Government invited the Court to examine whether, as stated in Article 41 of the Convention, “the internal law of the High Contracting Party concerned” allowed “reparation to be made”.

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 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.

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 specified that it would be possible to envisage, either immediately or after the resolution of the Cyprus problem, restitution of the properties described in paragraph 14 (b) above. Had the applicant applied to the IPC, the latter

would have offered CYP 9,320.72 (approximately EUR 15,925) to compensate the loss of use and CYP 12,560.62 (approximately EUR 21,461) for the value of the properties. According to an expert appointed by the authorities of the “TRNC”, the 1974 open-market value of the properties described in paragraph 14 (b) above was CYP 1,875 (approximately EUR 3,203).

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 with respect to peaceful enjoyment of her properties in northern Cyprus (see paragraph 50 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 her land and real estate since 1974, the applicant had effectively lost all access and control as well as all possibilities to use and enjoy her properties (see paragraph 48 of the principal judgment). She is therefore entitled to a measure of compensation in respect of losses directly related to this violation of her 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, for the property described under paragraph 14 (a) above and as from 28 June 2000 for the properties described under paragraph 14 (b) above, until the present time (see, *mutatis mutandis*, *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 affirmations of ownership of Turkish-occupied immovable properties produced by the applicant (see paragraph 6 above) show that on 28 April 2010 she was still the owner of the properties described in paragraph 14 (b) above. As to the property described in paragraph 14 (a) above, the applicant had declared that she had purchased the building site at issue and paid its full price, being unable to register her title by reason of the 1974 Turkish invasion (see paragraph 11 of the principal judgment). The Court has accepted that under these conditions the applicant had a “possession” over this plot of land within the meaning of Article 1 of Protocol No. 1 (see paragraphs 45 and 46 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), 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 her (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).

33. 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 26-27 above), while the applicant has provided information according to which: in the period 1969-1973 building sites were sold at sums comprised between EUR 26.80 and EUR 55.11 per square metre; in 1973 two fields had a price of EUR 75.93 and EUR 83.53 per square metre; in 1973 and 1974 two building sites in Dherynia were sold for EUR 15.25 and EUR 14.91 per square metre; in 1973 three apartments located in Nicosia had market prices of EUR 181, EUR 198 and EUR 222 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, it finds that the rates applied by her are on the high side (see, *mutatis mutandis*, *Demades* (just satisfaction), cited above, § 24).

35. Moreover, with respect to the properties described in paragraph 14 (b) above, the second valuation report calculated the rents expected to be collected from 1 January 1987 until 28 June 2000, and not from 28 June 2000 (on which date the real estate at issue was transferred to the applicant – see paragraphs 14 and 30 above) until the present time.

36. 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 her properties as she saw fit (see *Demades* (just satisfaction), cited above, § 29, and *Xenides-Arestis* (just satisfaction), cited above, § 47). It recalls,

however, that it has found that there had been no violation of Articles 3, 5, 6, 7, 11, 13 and 14 of the Convention, read in conjunction with Articles 5, 6 and 7 (see paragraph 2 above). Therefore, no award for pecuniary or non-pecuniary damage should be made on these accounts.

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 395,234 and EUR 239,204 – see paragraphs 17 and 19 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 (the global sum of EUR 15,925 – see paragraph 28 above) does not seem to take into due account the number and nature of the properties owned by the applicant and described in paragraph 14 above. They consisted in one building site under subdivision and the $\frac{3}{4}$ shares in two houses of 115 square metres each, one yard and one shop. In this respect, it is to be noted that the Turkish-Cypriot authorities made their estimates only with regard to one of the applicant's possessions, namely the plot mentioned in paragraph 14 (b) above; the IPC did not take into account the loss of use for the building plot described in paragraph 14 (a) above. Making its assessment on an equitable basis, the Court decides to award the applicant EUR 60,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

38. In her just satisfaction claims of December 2002, the applicant sought CYP 7,200 (approximately EUR 12,302) for the costs and expenses incurred before the Court. On 21 June 2010 the applicant specified that her total legal fees amounted to EUR 21,046.15, while the new expert's report had a cost of EUR 575.

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 report 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* (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. It is also to be recalled that in the principal judgment it found no violation of Articles 3, 5, 6, 7, 11, 13 and

14 of the Convention, read in conjunction with Articles 5, 6 and 7 (see paragraph 2 above). In the light of the above, the Court decides to award the total sum of EUR 8,000 for costs and expenses.

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 60,000 (sixty 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