



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

FOURTH SECTION

CASE OF CHRISTODOULIDOU v. TURKEY

(Application no. 16085/90)

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 Christodoulidou 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. 16085/90) 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 Lella Christodoulidou (“the applicant”), on 12 January 1990.

2. In a judgment delivered on 22 September 2009 (“the principal judgment”), the Court 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 complaint under Article 14 of the Convention and that, in breach of Article 3 of the Convention, the applicant had been submitted to an inhuman and degrading treatment. Finally, it held that there had been no violation of Article 11 of the Convention (*Christodoulidou v. Turkey*, no. 16085/90, §§ 44, 46, 61 and 77, and points 1-4 of the operative provisions, 22 September 2009).

3. Under Article 41 of the Convention the applicant sought just satisfaction of 289,746 Cypriot pounds (CYP – approximately 495,060 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 100,000 (approximately EUR 170,860) in respect of non-pecuniary damage and approximately EUR 6,834 for the costs and expenses incurred before the Court.

4. The Court awarded the applicant EUR 5,000 in respect of the non-pecuniary damage related to the violation of Article 3 of the Convention (*ibid.*, § 89, and point 5 of the operative provisions). Since the question of the application of Article 41 of the Convention in respect of the violation of Article 1 of Protocol No. 1 to the Convention and of the costs and expenses was not ready for decision, the Court reserved it 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.*, §§ 90 and 93, and point 6 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 22 April 2010 the properties described in paragraph 14 below were registered in the name of “Christodoulidou Lella”.

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 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. 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

11. 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

12. In her just satisfaction claims of April 2000, the applicant requested 289,746 Cypriot pounds (CYP – approximately 495,060 euros (EUR)) for pecuniary damage. She relied on an expert's report 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 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 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 Kyrenia, Kazaphani and Karmi, where the applicant's properties were located.

13. The starting point of the valuation report was the rental value of the applicant's properties in 1974, calculated on the basis of a percentage

(varying from 6% to 4%) of their market value. This sum was subsequently adjusted upwards according to an average annual rental increase of 12% (5% for the house described in paragraph 10 (a) of the principal judgment). Compound interest for delayed payment was applied at a rate of 8% per annum.

14. According to the expert, the 1974 values of the applicant's properties were as follows:

(a) property described in paragraph 10 (a) of the principal judgment (Kyrenia/Pano Kyrenia, plot no. 45, sheet/plan 12/21.1.12, registration no. C1703, house with garden; according to the applicant, the surface/area of the house and of the garden were, respectively 190 and 753 m²): market value CYP 26,500 (approximately EUR 45,277); rental value CYP 1,325 (approximately EUR 2,263);

(b) property described in paragraph 10 (b) of the principal judgment (Kyrenia/Kazafani, plot no. 95/1/1, sheet/plan 12/22W2, garden/orchard; area: 2,351 m²): market value CYP 9,404 (approximately EUR 16,067); rental value CYP 564 (approximately EUR 963);

(c) property described in paragraph 10 (c) of the principal judgment (Kyrenia/Karmi, plot no. 222, sheet/plan 12/27E2, field; area: 3,138 m²): market value CYP 3,138 (approximately EUR 5,361); rental value CYP 188 (approximately EUR 321);

(d) property described in paragraph 10 (d) of the principal judgment (Kyrenia/Karmi, plot no. 282, sheet/plan 12/27E2, field; area: 1,650 m²): market value CYP 1,650 (approximately EUR 2,819); rental value CYP 99 (approximately EUR 169);

(e) property described in paragraph 10 (e) of the principal judgment (Kyrenia/Karmi, plot no. 291/1, sheet/plan 12/27E2, field; area: 2,264 m²): market value CYP 2,264 (approximately EUR 3,868); rental value CYP 136 (approximately EUR 232).

15. In a letter of 28 January 2008 the applicant observed that it had been a considerable time since she had presented her claims for just satisfaction and that the claim for pecuniary losses needed to be updated according to the increase in the market value of land in Cyprus (between 10 and 15% per annum).

16. 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. 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 1,655,255.

17. The expert produced synoptic tables of “comparable sales for properties at Karmi, Kazafani and Pano and Kato Keryneia”, from which it transpired that in the period 1969-1973 fields in the first two locations were sold at prices comprised between CYP 0.75 (approximately EUR 1.28) and CYP 2.99 (approximately EUR 5.10) per square metre, while in the same

period building sites in Pano and Kato Keryneia had a market value between CYP 9.28 (approximately EUR 15.85) and CYP 25.46 (approximately EUR 43.50) 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 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%

18. In her just satisfaction claims of April 2000, the applicant further claimed CYP 40,000 (approximately EUR 68,344) in respect of non-pecuniary damage. She stated that this sum had been calculated on the basis of the sum awarded by the Court in the *Loizidou v. Turkey* judgment ((just satisfaction), 28 July 1998, *Reports of Judgments and Decisions* 1998-IV), taking into account, however, the fact that the period for which the damage was claimed in the instant case was longer and that there had also been a violation of Article 14 of the Convention. The applicant also claimed CYP 20,000 (approximately EUR 34,172) in respect of the moral damage suffered for the loss of her home and CYP 40,000 (approximately EUR 68,344) for the “violations of Articles 3, 10 and 11” of the Convention. The total sum claimed for non-pecuniary damage was thus CYP 100,000 (approximately EUR 170,860).

(b) The Government

19. Following a request from the Court, on 15 September 2008 the Government filed comments on the applicant's claims for just satisfaction. They observed that the applicant's properties were “fields” and that very little rent could be obtained from fields in Cyprus. 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 which could be used 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.

20. As an annual increase in the value of the properties had been applied, it would be unfair to add compound interest for delays in payment. Moreover, the applicant's calculations had made no allowance for outgoings such as tax liabilities, expenses and costs for repairing the properties.

21. 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.

22. 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).

23. 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.

24. 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”.

25. 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 (c), (d) and (e) above. 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. Had the applicant applied to the IPC, the latter would have offered CYP 93,912.28 (approximately EUR 160,458) to compensate the loss of use and CYP 95,735.36 (approximately EUR 163,573) 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 properties described in paragraph 14 above was CYP 9,291 (approximately EUR 15,874).

26. 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*

27. 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 virtue of the complete denial of the applicant's right to the peaceful enjoyment of her properties in northern Cyprus (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 her land and real estate, the applicant had effectively lost all access and control as well as all possibilities to use and enjoy her properties (see paragraph 42 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 the 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).

28. 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 22 April 2010 she was still the owner of the properties described in paragraph 14 above.

29. 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).

30. 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 23-24 above), while the applicant has produced information according to which: in the period 1969-1973 fields in Karmi and Kazafani were sold at prices

comprised between EUR 1.28 and EUR 5.10 per square metre; in the same period building sites in Pano and Kato Keryneia had a market value between EUR 15.85 and EUR 43.50 per square metre; in 1973 apartments located in Nicosia were sold for prices comprised between EUR 181 and EUR 222 per square metre (see paragraph 17 above).

31. 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).

32. 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 an award for the breach of Article 3 of the Convention has already been made in the principal judgment (see paragraph 4 above) and that on 10 November 1999 the applicant withdrew her complaint under Article 10 of the Convention. As indicated in the decision on the admissibility, this complaint did “no longer form part of the application”. As far as the applicant's right to respect for her home is concerned, it is to be observed that no complaint under Article 8 of the Convention had been raised before the application was declared admissible. Moreover, the Court found that there had been no violation of Article 11 of the Convention (see paragraph 2 above). It follows that no further award for pecuniary or non-pecuniary damage should be made on these accounts.

33. 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 1,655,255 and EUR 170,860 – see paragraphs 16 and 18 above) are 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 160,458 – see paragraph 25 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. These properties consisted in one house of 190 square metres with a garden of 753 square metres and four garden/fields of a total area of 9,403 square metres. Making its assessment on an equitable basis, the Court decides to award the applicant EUR 200,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

34. In her just satisfaction claims of April 2000, the applicant sought CYP 4,000 (approximately EUR 6,834) for the costs and expenses incurred before the Court. This sum included the cost of the expert report assessing the value of her properties. On 21 June 2010 the applicant specified that her total legal fees amounted to EUR 14,759.68, while the new expert's report had a cost of EUR 1,380.

35. The Government did not comment on this point.

36. 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).

37. The Court notes that the case involved perusing a certain amount of factual and documentary evidence and required a fair degree of research and preparation. In particular, the costs associated with producing valuation reports in view of the continuing nature of the violation at stake were essential to enable the Court to reach its decision regarding the issue of just satisfaction (see *Demades* (just satisfaction), cited above, § 34, and *Xenides-Arestis* (just satisfaction), cited above, § 47).

38. 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 Article 11 of the Convention (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

39. 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 200,000 (two hundred 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