



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

FOURTH SECTION

CASE OF EPIPHANIOU AND OTHERS v. TURKEY

(Application no. 19900/92)

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 Epiphaniou 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. 19900/92) 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 six Cypriot nationals, Mr Phanos Epiphaniou, Mrs Sofi Phitidou, Mr Kleanthis Stavri, Mr Christodoulos Demetriades, Mr Theodoros Economou and Mr Anastassis Georgiou (“the applicants”), on 26 January 1990.

2. In a judgment delivered on 22 September 2009 (“the principal judgment”), the Court held that the heirs of applicants nos. 4 (Mr Christodoulos Demetriades, who died on 12 August 2005) and 5 (Mr Theodoros Economou, who died on 24 February 2005) had standing to continue the present proceedings in the deceased'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 applicants nos. 1 (Mr Phanos Epiphaniou), 3 (Mr Kleanthis Stavri) and 5 (Mr Theodoros Economou) 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 it was not necessary to examine the applicants' complaints under Articles 13 and 14 of the Convention and the complaint of applicants nos. 2 (Mrs Sofi Phitidou), 4 (Mr Christodoulos Demetriades) and 6 (Mr Anastassis Georgiou) under Article 8 of the Convention (*Epiphaniou and Others v. Turkey*,

no. 19900/92, §§ 19, 20, 27, 37, 39, 41 and 31, and points 1-6 of the operative provisions, 22 September 2009).

3. Under Article 41 of the Convention the applicants sought just satisfaction for the deprivation of their properties concerning the period between January 1990 and December 2003 (or, for applicants nos. 1, 2 and 4, December 2007). Several valuation reports, setting out the basis of their loss, were appended to their observations. In particular, applicant no. 1 claimed 645,157.10 euros (EUR), applicant no. 2 claimed EUR 1,006,711.40, applicant no. 3 claimed EUR 171,680, the heirs of applicant no. 4 claimed EUR 1,200,290.80, the heirs of applicant no. 5 claimed EUR 147,154 and applicant no. 6 claimed EUR 14,523. Furthermore, under the head of non-pecuniary damage applicants nos. 1, 2 and 4 claimed approximately EUR 239,204 each, while the other applicants claimed approximately EUR 170,860 each. All the applicants claimed a sum 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.*, §§ 64 and 67, and point 7 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. Applicants nos. 1 to 5 and the Government each filed observations on these matters. On 14 June 2010 applicant no. 1 and the heirs of applicant no. 4 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 18 May 2001 applicant no. 1 had transferred the properties described in paragraph 15 below to his children (Mrs Andri Hadjikyriacou, Mrs Marina Clerides and Mr Nicolas Epiphaniou) and that on 14 August 2008 Mrs Marina Demetriades, who had inherited a share in the properties of applicant no. 4 described in paragraph 18 below, had transmitted the said share to her two children (Mrs Christiana Papapetrou and Mr Michael Papapetrou). Applicants nos. 2 and 3 stated that “no changes have been effected to the ownership” of their properties. They failed, however, to produce any written evidence supporting their statement and/or showing the current ownership of the properties concerned by the principal judgment. The heirs of applicant no. 5 (Mr Phivos Economou and Mrs Elli Economou) produced certificates of ownership of Turkish-occupied immovable property showing

that on 15 March 2010 the “land with two houses” described in paragraph 19 above was registered in their name. No observations or documents were received from applicant no. 6.

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 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 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 20 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 22 April 2003, the applicants requested sums for pecuniary damage. With the exception of applicant no. 6, they relied on an expert's reports 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 day of payment. The rents claimed were for the period dating back to January 1990 until December 2003. The applicants did not claim compensation for any purported expropriation since they were still the legal owners of the properties. The evaluation reports contained a description of the town of Famagusta, of its development perspectives and of the applicants' properties.

14. The starting point of the expert's reports was the open market value of the properties in August 1974. The annual rent obtainable from them was then calculated as a percentage (varying from 4% to 6%) of their estimated value. The expert further took into account the trends of rent increase on the basis of: (a) the nature of the area of the properties; (b) the trends for the period 1970-1974; (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, increased by a percentage of 25%. For agricultural land, the expert proceeded on the basis of a certain annual rental value per decare (generally between CYP 3 and CYP 5 in 1974). Moreover, compound interest for delayed payment was applied at a rate of 8% (6% from 2001 onwards) per annum.

15. For applicant no. 1 (Mr Phanos Epiphaniou), the figures given by the expert were the following:

(a) property described in paragraph 10 (a) of the principal judgment (Famagusta, Ayios Ioannis, plot no. 370, sheet/plan 33/12.3.1, block B; use: residence on 1st floor and shops on ground floor; share: $\frac{1}{2}$; area of applicant's share: 435 m² of land and 250 m² of construction): market value in 1974: CYP 42,000 (approximately EUR 71,761); annual rent in 1974: CYP 2,520 (approximately EUR 4,305); estimated loss plus interest: CYP 226,081 (approximately EUR 386,281);

(b) property described in paragraph 10 (b) of the principal judgment (Famagusta, Ayios Loukas, plot no. 974, sheet/plan 33/11.E.1, block C; use: building site for investment; share: whole; area: 521 m²): market value in 1974: CYP 3,000 (approximately EUR 5,125); annual rent in 1974: CYP 520 (approximately EUR 888); estimated loss plus interest: CYP 22,632 (approximately EUR 38,669);

(c) property described paragraph 10 (c) of the principal judgment (Famagusta, Milia, Haragkas, plot no. 214/4/3, sheet/plan 23/14; use: land to be divided into building sites; share: whole; area: 1,052 m²): the rent payable in 1974 was calculated on the basis of CYP 5 per decare; rental value in 1974: CYP 5.25 (approximately EUR 9); estimated loss plus interest: CYP 545 (approximately EUR 931).

Thus, the total sum claimed by applicant no. 1 for pecuniary damage was thus CYP 249,258 (approximately EUR 425,882).

16. For applicant no. 2 (Mrs Sofi Phitidou), the figures given by the expert were the following:

(a) property described in paragraph 11 (a) of the principal judgment (Famagusta, Ayios Nicolaos, plot no. 200, sheet/plan 33/12.6.2, block E; use: land for development; share: whole; area: 566 m²): market value in 1974: CYP 25,500 (approximately EUR 43,569); estimated loss plus interest: CYP 287,255 (approximately EUR 490,803);

(b) property described in paragraph 11 (b) of the principal judgment (Famagusta, Kantara-Davlos, plot no. 68.9/1, sheet/plan 7/50.6.1; use: house with yard used as holiday house; share: whole; area of land: 1,255 m²; area of construction: 225 m²): market value in 1974: CYP 15,600 (approximately EUR 26,654); annual rent in 1974: CYP 624 (approximately EUR 1,066); estimated loss plus interest: CYP 55,982 (approximately EUR 95,650).

Thus, the total sum claimed by applicant no. 2 for pecuniary damage was CYP 343,237 (approximately EUR 586,454).

17. For applicant no. 3 (Mr Kleanthis Stavri), the expert considered that the 1974 market value of the property described in paragraph 12 of the principal judgment (Famagusta, Ayias Zonis, plot no. 105, sheet/plan: 33/12.6.IV, block F; use: house with yard; share: $\frac{1}{2}$; area of applicant's share of land: 475 m²; area of applicant's share of construction: 200 m²) was CYP 28,000 (approximately EUR 47,840), the 1974 annual rent was

CYP 1,120 (approximately EUR 1,913) and the estimated loss plus interest was CYP 100,480 (approximately EUR 171,680).

18. Applicant no. 4 (Mr Christodoulos Demetriades) owned four building sites and two plots of land which were registered as follows (see paragraph 13 (a), (b), (c), (d), (e) and (f) of the principal judgment):

(a) Famagusta, Ayios Loucas, plot no. 752, sheet/plan 24/59.E.2, block D; use: building site; share: whole; area: 662 m²;

(b) Famagusta, Ayios Loucas, plot no. 753, sheet/plan 24/59.E.2, block D; use: building site; share: whole; area: 675 m²;

(c) Famagusta, Ayios Loucas, plot no. 754, sheet/plan 24/59.E.2, block D; use: building site; share: whole; area: 694 m²;

(d) Famagusta, Ayios Loucas, plot no. 755, sheet/plan 24/59.E.2, block D; use: building site; share: whole; area: 707 m²;

(e) Famagusta, Ayios Loucas, plot no. 948, sheet/plan 24/59.E.2, block D; use: land; share: whole; area: 6,213 m²;

(f) Famagusta, Spathariko, plot no. 270, sheet/plan 24/2.E.2, block D; use: land; share: ½; area of applicant's share: 18,373.50 m².

The expert considered that the overall 1974 market value of the first five properties was CYP 53,000 (approximately EUR 90,555) and that the estimated loss plus interest was CYP 396,935 (approximately EUR 678,203). For the land described under (f) above, the rent payable in 1974 was calculated on the basis of CYP 3 per decare; the 1974 rental value was CYP 112.37 (approximately EUR 192) and the estimated loss plus interest was CYP 5,741 (approximately EUR 9,809).

Thus, the total sum claimed by applicant no. 4 for pecuniary damage was CYP 402,676 (approximately EUR 688,012).

19. For applicant no. 5 (Mr Theodoros Economou), the expert considered that the 1974 market value of the property described in paragraph 14 of the principal judgment (Famagusta, Chrysospiliotissa, plot no. 371, sheet/plan 33/19.3.IV, block D; use: land – of 743 m² – with two houses of a total area of 370 m², one used by the applicant as his residence and the other one for renting; share: whole) was CYP 24,000 (approximately EUR 41,006), the 1974 annual rent was CYP 960 (approximately EUR 1,640) and the estimated loss plus interest was CYP 86,126 (approximately EUR 147,154).

20. Applicant no. 6 (Mr Anastassis Georgiou) did not submit any expert report. He stated that as he was living only on his pension and had no other income, he could not afford to pay for the valuation of his plots of land. The latter were registered as follows (see paragraph 15 (a), (b) and (c) of the principal judgment):

(a) Famagusta, Latsia, Trikomo, plot no. 137/1/6/2, sheet/plan 15/43; use: land with trees for agriculture; share: 1/6;

(b) Famagusta, Pervolia Trikomou, Kokkines, plot no. 127/2/2, sheet/plan 15/43; use: land for agriculture; share: whole;

(c) Famagusta, Pervolia Trikomou, Kokkines, plot no. 141, sheet/plan 15/43; use: land for agriculture; share: whole.

To the best of applicant no. 6's knowledge and belief, the 1974 value of the properties described above was not less than CYP 10,000 (approximately EUR 17,086) and the estimated loss plus interest was at least CYP 8,500 (approximately EUR 14,523).

21. On 24 January 2008, following a request from the Court for an update on the developments of the case, applicants nos. 1 and 2 and the heirs of applicant no. 4 submitted updated claims for just satisfaction, which were meant to cover the loss of the use of the properties from 1 January 1990 to 31 December 2007. They produced revised valuation reports, which, on the basis of the criteria adopted in the previous reports, concluded that the whole sum due for the loss of use was: EUR 645,157.1 for applicant no. 1; EUR 1,006,711.4 for applicant no. 2; EUR 1,200,290.8 for applicant no. 4.

22. On 26 May and 14 June 2010 applicants nos. 1 to 5 produced revised valuation reports, which were meant to cover the loss of use for the period between January 1987 and June 2010. On the basis of the criteria used in the previous reports, the expert appointed by the applicants considered that the whole sums due to his clients for pecuniary damage were the following: applicant no. 1: EUR 786,862; applicant no. 2: EUR 1,274,194; applicant no. 3: EUR 310,195; heirs of applicant no. 4: EUR 1,527,123; heirs of applicant no. 5: EUR 298,189. No valuation report was submitted by applicant no. 6.

23. The applicants also submitted a synoptic table showing “comparable sales of building-sites and land within the Municipal area of Famagusta”, from which it transpires that in the period 1971-1974 building sites had market values comprised between CYP 11.35 and CYP 46.18 per square metre. In the Ayios Loukas Quarter of Famagusta prices were comprised between CYP 2.22 and CYP 7.61 per square metre. The heirs of applicant no. 5 moreover indicated that three building sites in Varosia had been sold for CYP 5.46, 6.19 and 6.16 per square metre.

24. On 22 June 2010 the applicants produced a “report on 1974 property prices ... in Turkish occupied northern Cyprus”, prepared by “EMS Economic Management Ltd.”, to which were annexed 43 copies of files of the Bank of Cyprus relating to loans, mortgages and valuations undertaken in the period 1971-1974 with respect to acquisition of properties in Famagusta. Their content was summarised in a synoptic table. It appears from these documents that Famagusta could be divided in areas with different prices for real estate. In particular, the average 1974 price of a square metre of constructible land was: (a) CYP 102 for the areas on the beach or close to it, plus the new town centre; (b) CYP 44 in Ayios Nicolaos and Varoshia; (c) CYP 18 in Stavros Famagusta; (d) CYP 16 to 25 in Kato Varosi e Ayios Memnon; (e) CYP 41 in Ayia Zoni; (f) CYP 8 in

Ayios Loucas. The study concluded that in view of its location in the Chrysospiliotissa area, a relatively high land price area which could be compared with Ayios Nicolaos, in 1974 the land possessed by applicant no. 5 (see paragraph 19 above) had a price comprised between CYP 32 (approximately EUR 54) and CYP 71 (approximately EUR 121) per square metre. The applicants further submitted a research from the archives of a property development company, showing the sales of twenty apartments in the period 1970-1974. Four apartments were sold in 1974 for prices ranging from CYP 16,200 (two bedrooms) to CYP 19,000 (three bedrooms). According to this research, the compound annual appreciation of the apartments since the Turkish invasion had been 9.50% per year.

25. In their just satisfaction claims of 22 April 2003, the applicants further claimed CYP 100,000 (approximately EUR 170,860) each in respect of non-pecuniary damage. In their updated claims for just satisfaction of 24 January 2008, applicants nos. 1 and 2 and the heirs of applicant no. 4 increased their claim to CYP 140,000 (approximately EUR 239,204) each.

(b) The Government

26. In reply to the applicants' just satisfaction claims of 22 April 2003, the Government challenged the conclusions reached by the Court in the *Loizidou v. Turkey* judgment ((just satisfaction), 28 July 1998, *Reports of Judgments and Decisions* 1998-IV) and considered that in cases such as the present one, no award should be made by the Court under Article 41 of the Convention. They underlined that the applicants' inability to have access to their properties depended on the political situation of the island 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.

27. 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.

28. The Government submitted that as an annual increase of the value of the properties had been applied, it would be unfair to add compound interest for delayed payment, and that Turkey had recognised the jurisdiction of the Court on 21 January 1990, and not in January 1987. In any event, the alleged 1974 market value of the properties was exorbitant, highly excessive and speculative; it was not based on any real data with which to make a

comparison and made insufficient allowance for the volatility of the property market and its susceptibility to influences both domestic and international. The report submitted by the 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.

29. 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.

30. 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 paragraphs 11 (a) and 12 of the principal judgment. The other immovable properties referred to in the application were possessed by refugees, by the Ministry of Finance and by the Ministry of Education; they 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 720,771.63 (approximately EUR 1,231,510) to compensate the loss of use and CYP 767,719.51 (approximately EUR 1,311,725) 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' properties was the following:

- applicant no. 1: property described in paragraph 15 (a) above: CYP 42,373 (approximately EUR 72,398); property described in paragraph 15 (b) above: CYP 1,695 (approximately EUR 2,896); property described in paragraph 15 (c) above: CYP 1,695 (approximately EUR 2,896);

- applicant no. 2: property described in paragraph 16 (a) above: CYP 7,203 (approximately EUR 12,307); property described in paragraph 16 (b) above: CYP 11,864 (approximately EUR 20,270);

- applicant no. 3: property described in paragraph 17 above: CYP 5,084 (approximately EUR 8,686);

- applicant no. 4: properties described in paragraph 18 (a), (b), (c) and (d) above: CYP 4,237 (approximately EUR 7,239) for each plot of land; property described in paragraph 18 (e) above: CYP 5,932 (approximately

EUR 10,135); property described in paragraph 18 (f) above: CYP 4,745 (approximately EUR 8,107);

- applicant no. 6: property described in paragraph 20 (a) above: CYP 2,825 (approximately EUR 4,826); property described in paragraph 20 (b) above: CYP 8,983 (approximately EUR 15,348); property described in paragraph 20 (c) above: CYP 11,864 (approximately EUR 20,270).

No estimate was given for the property owned by applicant no. 5 and described in paragraph 19 above.

31. Upon fulfilment of certain conditions, the IPC could also have offered the applicants exchange of their properties with Turkish-Cypriot properties located in the south of the island.

32. 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 applicants' representative, inviting his clients to introduce an application before it.

33. 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).

34. 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.

35. 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”.

36. The report prepared by the Turkish-Cypriot authorities confirmed that it would be possible to envisage restitution of two of the applicants' properties. Had the applicants applied to the IPC, the latter would have

increased its offer up to CYP 824,977.82 (approximately EUR 1,409,557) to compensate the loss of use and up to CYP 839,770.45 (approximately EUR 1,434,831) for the value of the properties. The expert appointed by the authorities of the “TRNC” also confirmed the 1974 open-market values of the applicants' properties as indicated in paragraph 30 above.

37. In particular, the IPC would have offered the following sums for each applicant:

- applicant no. 1: loss of use: CYP 300,728.27 (approximately EUR 513,824); value of the properties: CYP 306,566.19 (approximately EUR 523,799);
- applicant no. 2: loss of use: CYP 125,297.42 (approximately EUR 214,083); value of the properties: CYP 127,729.77 (approximately EUR 218,239);
- applicant no. 3: loss of use: CYP 33,409.14 (approximately EUR 57,082); value of the property: CYP 34,057.70 (approximately EUR 58,191);
- applicant no. 4: loss of use: CYP 209,984.15 (approximately EUR 358,779); value of the properties: CYP 212,838.13 (approximately EUR 363,655);
- applicant no. 6: loss of use: CYP 155,558.84 (approximately EUR 265,787); value of the properties: CYP 158,578.66 (approximately EUR 270,947).

No estimate was given for the pecuniary damage sustained by applicant no. 5.

38. 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

39. 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 27 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 applicants nos. 1, 3 and 5 to respect for their home (see paragraph 37 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 25 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 for applicants nos. 2, 3 and 6 and until 18 May 2001, 12 August 2005 and 24 February 2005 respectively for applicants nos. 1, 4 and 5 (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).

40. In connection with this, the Court observes that applicants nos. 4 and 5 died on 18 August and 24 February 2005 (see paragraph 2 above); their heirs have not introduced an autonomous claim concerning a potential violation of the property rights which they might have acquired in their quality of successors of Mr Christodoulos Demetriades and Mr Theodoros Economou, but have merely successfully requested to pursue the application lodged by the deceased (see paragraphs 18 and 19 of the principal judgment and point 1 of its operative provisions). Moreover, the affirmations of ownership of Turkish-occupied immovable properties produced by applicant no. 1 show that on 18 May 2001 he transferred the properties described in paragraph 15 above to his three children.

41. Applicants nos. 2 and 3 declared that “no changes have been effected to the ownership” of their properties. However, notwithstanding an explicit request of the Court (see paragraph 5 above), they have failed to produce any written evidence, such as certificates of ownership of Turkish-occupied immovable properties issued by the Department of Lands and Surveys of the Republic of Cyprus, supporting their statement and/or showing the current ownership of the properties concerned by the principal judgment (see paragraph 6 above). Moreover, no document or statement has been submitted by applicant no. 6. The Court has taken note of this failure; it considers that it may result in a reduction of the awards to be made under the head of pecuniary damage.

42. 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* (just satisfaction), cited above, § 31). 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 (*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).

43. The Court notes that in response to its request to submit material relevant to assessing the 1974 market value of the applicants' properties, the Government have relied on the accuracy of the IPC's calculations (see paragraphs 29 and 34-35 above), while the applicants have referred to comparable sales of building sites in the Municipal area of Famagusta and in the Ayios Loukas Quarter of Famagusta; they have moreover produced two detailed studies on the prices in northern Cyprus at the relevant time (see paragraphs 23 and 24 above).

44. 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).

45. 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).

46. Having regard to the above considerations, the Court is of the opinion that the sums claimed by applicants nos. 1 to 5 in respect of pecuniary and non-pecuniary damage (see paragraph 22 above) are excessive. It considers that the amounts which the "TRNC" authorities could have offered applicants nos. 1 to 4 in respect of loss of use (see paragraph 37 above) constitute, in principle, a fair starting point for calculating the damage sustained by them. It is regrettable, however, that the pecuniary damage suffered by applicant no. 5 has not been taken into account in the IPC's calculations (see paragraphs 30 and 37 above). As far as applicant no. 6 is concerned, the Court cannot but refer to the only estimate given by him (see paragraph 20 above); it also took into account his failure to submit any updated claims for just satisfaction as well as any evidence of current ownership of the properties concerned by the principal judgment (see paragraphs 6, 22 and 41 above).

47. Making its assessment on an equitable basis, the Court decides to award the following sums in respect of pecuniary and non-pecuniary damage: EUR 515,000 to applicant no. 1; EUR 300,000 to applicant no. 2; EUR 100,000 to applicant no. 3; EUR 400,000 to applicant no. 4; EUR 220,000 to applicant no. 5; EUR 14,523 to applicant no. 6.

B. Costs and expenses

48. In their just satisfaction claims of 22 April 2003, relying on bills from their representative, the applicants sought CYP 3,310.25 (approximately EUR 5,655) each for the costs and expenses incurred before the Court. Applicants nos. 1, 2, 3, 4 and 5 also sought the reimbursement of the costs of the expert report assessing the value of their properties (amounting to CYP 460, 402.5, 345, 575 and 345 respectively). In their updated claims for just satisfaction of 24 January 2008, applicants nos. 1, 2 and 4 submitted additional bills of costs for the new valuation report and for legal fees amounting to EUR 392.98 and EUR 982.45 for each of them. In 2010 applicants nos. 1 to 4 submitted that their further legal fees and expert report's costs amounted to EUR 876.97 and EUR 1,150 respectively for each of them, while applicant no. 5 sought the additional sum of EUR 3,955.50.

49. The Government did not comment on this point.

50. 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).

51. 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 violations 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).

52. 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. Having regard to the fact that the legal issues raised by the application were almost identical for all the applicants, it decides to award the total sum of EUR 12,000.

C. Default interest

53. 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, 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 515,000 (five hundred and fifteen thousand euros) to applicant no. 1; EUR 300,000 (three hundred thousand euros) to applicant no. 2; EUR 100,000 (one hundred thousand euros) to applicant no. 3; EUR 400,000 (four hundred thousand euros) to the heirs of applicant no. 4; EUR 220,000 (two hundred and twenty thousand euros) to the heirs of applicant no. 5; EUR 14,523 (fourteen thousand five hundred and twenty-three euros) to applicant no. 6 in respect of pecuniary and non-pecuniary damage, plus any tax that may be chargeable on these sums;
 - (ii) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable to the applicants and/or their heirs, 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