



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

FOURTH SECTION

CASE OF HAPESHIS AND OTHERS v. TURKEY

(Application no. 38179/97)

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 Hapeshis 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. 38179/97) 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 two Cypriot and two British nationals, Mr Michael P. Hapeshis, Mrs Maria Hapeshi-Michaelidou, Mrs Praxoulla Hapeshi-Campbell and Mrs Prodromoulla Hapeshi-Evagora (“the applicants”), on 10 January 1997.

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 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' complaint under Article 14 of the Convention (*Hapeshis and Others v. Turkey*, no. 38179/97, §§ 22, 23, 29 and 32 and points 1-3 of the operative provisions, 22 September 2009).

3. Under Article 41 of the Convention the applicants sought just satisfaction of approximately 17,139,546 euros (EUR) for the deprivation of their properties concerning the period between January 1987, when the respondent Government accepted the right of individual petition, and 31 December 2007. Two valuation reports, setting out the basis of the applicants' loss, were appended to their observations. Furthermore, the applicants claimed approximately EUR 170,860 each in respect of non-

pecuniary damage and EUR 23,203 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.*, §§ 46 and 49, and point 4 of the operative provisions).

5. On 4 March 2010 the Court invited the applicants and the Government to submit any materials which they considered relevant to assessing the 1974 market value of the properties concerned by the principal judgment. The applicants were moreover invited to submit written evidence that the properties at stake were still registered in their name or to indicate and substantiate any transfer of ownership which might have taken place.

6. The applicants and the Government each filed observations on these matters. On 28 May 2008 the applicants produced certificates of ownership of Turkish-occupied immovable properties issued by the Department of Lands and Surveys of the Republic of Cyprus. It transpires from these documents that on 14 May 2010 the properties described in paragraph 13 (a), (b) and (c) below were registered in the name of the applicants, while the property described in paragraph 13 (h) below was owned by the first applicant (Michael P. Hapeshis); on the same date, the properties described in paragraph 13 (d), (e), (f) and (g) below were registered in the name of the first (Michael P. Hapeshis), second (Maria Hapeshi-Michaelidou) and fourth (Prodromoulla Hapeshi-Evagora) applicants and in the name of a certain “Kyriacou Pericle Kyriacos”. The latter is the son of the third applicant, Praxoulla Hapeshi-Campbell, who transferred to him the properties at issue on 19 August 2003. Mr Kyriacou Pericle Kyriacos declared that he wished to continue the procedure and authorised his mother to represent him in the proceedings before the Court.

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 23 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 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 29 September 1999, the applicants requested 4,489,931 Cypriot pounds (CYP – approximately EUR 7,671,496) for pecuniary damage. They relied on an expert's report assessing the value of their losses which included the loss of annual rent collected or expected to be collected from renting out their plots of land, 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 1987, when the respondent Government accepted the right of individual petition, until September 1999. The applicants did not claim compensation for any purported expropriation since they were still the legal owners of the properties. The evaluation report contained a description of Ayios Amvrosios, of its development perspectives and of the applicants' properties. The latter were registered as follows (see paragraph 8 of the principal judgment):

(a) plot of land with trees in Kapsala (plot no. 12/7/5/1, sheet/plan 13/15, registration no. 14426, area: 39,818 square metres (m²));

(b) plot of land with trees in Glifhonera (plot no. 12/7/3, sheet/plan 13/15, registration no. 13911, area: 56,105 m²);

(c) plot of land with trees in Glifhonera (plot no. 12/7/4, sheet/plan 13/15, registration no. 13912, area: 55,027 m²);

(d) plot of land with trees in Apati (plot nos. 13/4 and 15/3, sheet/plan 13/31, registration no. 10106, area: 2,342 m²);

(e) plot of land with trees in Spati (plot no. 250/3, sheet/plan 13/23, registration no. 7182, area: 3,345 m²);

(f) plot of land with trees in Apati (plot no. 11/6, sheet/plan 13/31, registration no. 10097, area: m² 437);

(g) plot of land with trees in Apati (plot no. 11, sheet/plan 13/31, registration no. 10087, area: 4,014 m²);

(h) plot of land in Trachonas (plot no. 579, sheet/plan 13/22, registration no. 5927; area: 1,673 m²).

14. In 1974, the properties described above were owned by the applicants' father, who died on 19 May 1991. According to his will, dated 18 May 1988, the plot described under paragraph 13 (h) above was to be inherited by the first applicant and the other plots were to be inherited by the four applicants in equal shares. The applicants registered their titles with the Department of Lands and Surveys of the Republic of Cyprus on 10 July 1995 (see paragraph 11 of the principal judgment).

15. The expert first observed that two of the applicants' properties were building sites situated in highly touristic locations. The annual rent obtainable from these plots of lands was calculated as a percentage (6%) of their market value in August 1974. A 12% annual increase was applied both to the rents and to the market value of the properties. According to the expert, these two building sites had a 1974 market value of CYP 450,000 (approximately EUR 768,870), while the annual rent obtainable from them in 1987 was CYP 109,200 (approximately EUR 186,579). The other applicants' properties were agricultural lands. In 1974 their total annual rental value was CYP 30.41 (approximately EUR 52), to which a 7% annual increase was applied. Moreover, compound interest for delayed payment was applied at a rate of 8% per annum.

16. On 25 January 2008, following a request from the Court for an update on the developments of the case, the applicants submitted updated claims for just satisfaction, which were meant to cover the period of loss of the use of the properties from 1 January 1987 to 31 December 2007. They produced a revised valuation report, which, on the basis of the criteria adopted in the previous report, concluded that the whole sum due for the loss of use for the agricultural lands was CYP 3,140.56 plus CYP 2,890.91 for interest. The total sum claimed under this head was thus CYP 6,301 (approximately EUR 10,765). As concerned the building sites, the total rent from 1 January 1987 to 31 December 2007 was CYP 5,596,692, while the interest amounted to CYP 4,428,347. The total sum claimed for these two properties was thus CYP 10,025,039 (approximately EUR 17,128,781), while the whole pecuniary damage suffered by the applicants was approximately EUR 17,139,546.

17. On 28 May 2010 the applicants 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. The expert appointed by the applicants considered that the whole sums due to his clients for pecuniary damage was EUR 20,897,559.

18. Having regard, *inter alia*, to a list of sales of comparable properties in the Kyrenia District, showing that in the period 1968-1971 the price of land was comprised between CYP 0.56 (approximately EUR 3.80) and CYP 2.242 (approximately EUR 0.95) per square metre, the expert

appointed by the applicants confirmed the 1974 market value of the two building sites as indicated in paragraph 15 above.

19. In their just satisfaction claims of 29 September 1999, the applicants further claimed non-pecuniary damages. They left up to the Court to determine their amount, noting, however, that they considered that the sum of CYP 100,000 (approximately EUR 170,860) for each of them would not be sufficient.

(b) The Government

20. 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 submitted that as an annual increase of the value of the properties had been applied, it would be unfair to add compound interest for delayed payment. Moreover, Turkey had recognised the jurisdiction of the Court on 21 January 1990, and not in January 1987. In any event, the alleged 1974 market value of the properties was exorbitant, highly excessive and speculative; it was not based on any real data with which to make a comparison and made insufficient allowance for the volatility of the property market and its susceptibility to influences both domestic and international. The report submitted by the applicants had instead proceeded on the assumption that the property market would have continued to flourish with sustained growth during the whole period under consideration.

21. The Government produced a valuation report prepared by the Turkish-Cypriot authorities, which they considered to be based on a "realistic assessment of the 1974 market values, having regard to the relevant land records and comparative sales in the areas where the properties [were] situated". This report contained two proposals, assessing, respectively, the sum due for the loss of use of the properties and their present value. The second proposal was made in order to give the applicants the option to sell the properties to the State, thereby relinquishing title to and claims in respect of them.

22. The report prepared by the Turkish-Cypriot authorities specified that it would be possible to envisage, either immediately or after the resolution of the Cyprus problem, restitution of the properties described in paragraph 13 (d), (e), (f) and (g) above. The other immovable properties referred to in the application were possessed by refugees; 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 401,239.52 (approximately EUR 685,557) to compensate the loss of use from July 1995

onwards and CYP 597,356.91 (approximately EUR 1,020,644) for the value of the properties. According to an expert appointed by the “TRNC” authorities, the 1974 open-market value of the applicants' properties was the following:

- plots of land described under paragraph 13 (a), (b) and (c) above (building sites): CYP 95,593.22 (approximately EUR 163,300);
- plot of land described under paragraph 13 (d) above: CYP 76.27 (approximately EUR 130);
- plot of land described under paragraph 13 (e) above: CYP 105.93 (approximately EUR 180);
- plot of land described under paragraph 13 (f) above: CYP 12.71 (approximately EUR 21);
- plot of land described under paragraph 13 (g) above: CYP 17.12 (approximately EUR 29);
- plot of land described under paragraph 13 (h) above: CYP 1,694.92 (approximately EUR 2,895).

23. 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.

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 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.

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 confirmed that it would be possible to envisage restitution of some of the applicants' properties. Had the applicants applied to the IPC, the latter would have increased its offer up to CYP 477,430.31 (approximately EUR 815,737) to compensate the loss of use and up to CYP 653,890.20 (approximately EUR 1,117,236) 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 22 above.

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 applicants' rights guaranteed by Article 1 of Protocol No. 1 by reason of the complete denial of the rights of the applicants with respect to peaceful enjoyment of their properties in northern Cyprus (see paragraph 29 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 plots of land, the applicants had effectively lost all access and control as well as all possibilities to use and enjoy their properties (see paragraph 27 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 on which they formally acquired ownership of the properties, namely 10 July 1995 (see paragraphs 11 and 29 of the principal judgment and paragraph 14 above), until the present time (see, *mutatis mutandis*, *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).

31. In connection with this, the Court observes that the affirmations of ownership of Turkish-occupied immovable properties produced by the applicants (see paragraph 6 above) show that on 14 May 2010 the first applicant was still the owner of the property described in paragraph 13 (h) above and that all the applicants were, in equal shares, still the owners of the properties described in paragraph 13 (a), (b) and (c) above. On the same date, the properties described in paragraph 13 (d), (e), (f) and (g) above were owned by the first, second and fourth applicants and by the son of the

third applicant (see paragraphs 6 and 14 above). The Court also observes that Mr Kyriacou Pericle Kyriacos was not one of the original applicants and does not, therefore, have standing to continue the present application on his mother's behalf or to be represented by her before the Court. The Court will take due account of the fact that the third applicant owned $\frac{1}{4}$ of the properties described in paragraph 13 (d), (e), (f) and (g) above only until 19 August 2003.

32. In the opinion of the Court, the valuations furnished by the applicants involve a significant degree of speculation and make insufficient allowance for the volatility of the property market and its susceptibility to influences both domestic and international (see *Loizidou v. Turkey* (just satisfaction), 28 July 1998, § 31, *Reports of Judgments and Decisions* 1998-IV). Accordingly, in assessing the pecuniary damage sustained by the applicants, the Court has, as far as appropriate, considered the estimates provided by them (see *Xenides-Arestis v. Turkey* (just satisfaction), no. 46347/99, § 41, 7 December 2006). In general it considers as reasonable the approach to assessing the loss suffered by the applicants with reference to the annual ground rent, calculated as a percentage of the market value of the properties, that could have been earned during the relevant period (*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).

33. The Court notes that notwithstanding its request to submit material relevant to assessing the 1974 market value of the applicants' properties, the parties have produced few elements in this respect. The Government have relied on the accuracy of the IPC's calculations (see paragraphs 21 and 26-27 above), while the applicants have produced a list of sales of comparable properties in the Kyrenia District, showing that in the period 1968-1971 the price of land was comprised between CYP 0.56 (approximately EUR 3.80) and CYP 2.242 (approximately EUR 0.95) per square metre (see paragraph 18 above).

34. 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). Moreover, the applicants' expert has calculated the loss of rents as from January 1987, when Turkey had recognised the right of individual petition, and not from 10 July 1995, when

the applicants became the legal owners of the properties (see paragraphs 11 and 29 of the principal judgment and paragraphs 14 and 30 above).

35. Finally, the Court is of the opinion that an award should be made in respect of the anguish and feelings of helplessness and frustration which the applicants must have experienced over the years in not being able to use their properties as they saw fit (see *Demades* (just satisfaction), cited above, § 29, and *Xenides-Arestis* (just satisfaction), cited above, § 47).

36. Having regard to the above considerations, the Court is of the opinion that the sums claimed by the applicants in respect of pecuniary and non-pecuniary damage (respectively, EUR 20,897,559 and EUR 683,440 – see paragraphs 17 and 19 above) are manifestly excessive. It considers that the amount which, according to the Government, the IPC could have offered the applicants in respect of loss of use (the global sum of EUR 815,737 – see paragraph 28 above) constitutes a fair basis for compensating the damage sustained by them. In connection with this, it is to be recalled that the properties concerned by the principal judgment are eight plots of land, some of which were building sites, of a total area of 162,761 square metres (see paragraph 13 above). Making its assessment on an equitable basis, the Court decides to award the applicants EUR 900,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

37. In their just satisfaction claims of 29 September 1999, relying on bills from their representatives, the applicants sought CYP 11,265.62 (approximately EUR 19,248) for the costs and expenses incurred before the Court. This sum included CYP 5,400 (approximately EUR 9,226) for the costs of the expert report assessing the value of their properties. In their updated claims for just satisfaction of 25 January 2008, they submitted additional bills of costs for the new valuation report and for legal fees amounting to EUR 1,955 and EUR 2,000 respectively. The total sum sought for cost and expenses was thus approximately EUR 23,203. Finally, on 28 May 2010 the applicants submitted that their further legal fees and expert report's costs amounted to EUR 1,400 and EUR 23,000 respectively.

38. The Government did not comment on this point.

39. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

40. The Court notes that the case involved perusing a certain amount of factual and documentary evidence and required a fair degree of research and preparation. In particular, the costs associated with producing updated valuation reports in view of the continuing nature of the violation at stake

were essential for enabling the Court to reach its decision regarding the issue of just satisfaction (see *Demades v. Turkey* (just satisfaction), cited above, § 34).

41. Although the Court does not doubt that the fees claimed were actually incurred, it considers the amount claimed for the costs and expenses relating to the proceedings before it excessive and decides to award the total sum of EUR 8,000.

C. Default interest

42. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's request to stay the examination of the applicants' claims for just satisfaction;
2. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 900,000 (nine 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 applicants, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 26 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President