



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

FOURTH SECTION

CASE OF NICOLA v. TURKEY

(Application no. 18404/91)

JUDGMENT
(Revision)

STRASBOURG

26 October 2010

FINAL

21/02/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Nicola v. Turkey (request for revision of the judgment of 27 January 2009),

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. 18404/91) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Cypriot national, Mr Loukas Nicola (“the applicant”), on 31 May 1991.

2. The applicant was represented by Mr L. Clerides, a lawyer practising in Nicosia. The Turkish Government (“the Government”) were represented by their Agent, Mr Z.M. Necatigil.

3. In a judgment delivered on 27 January 2009 (“the principal judgment”), the Court held that the applicant's son, Mr Andreas Luca Nicolaides, had standing to continue the present proceedings in his 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 the applicant to respect for his home and of Article 1 of Protocol No. 1 to the Convention by virtue of the fact that the applicant was denied access to and control, use and enjoyment of his property as well as any compensation for the interference with his property rights. Furthermore, it found that it was not necessary to examine the applicant's complaints under Articles 1, 13 and 14 of the Convention (*Nicola v. Turkey*, no. 18404/91, §§ 15, 16, 28, 37, 40 and 43 and points 1-5 of the operative provisions, 27 January 2009).

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it in whole and invited the Government and the applicant's son 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.*, §§ 58 and 61, and point 6 of the operative provisions).

5. On 13 July 2009 the Court invited the applicant's son and the Government to submit any materials which they considered relevant to assessing the 1974 market value of the property concerned by the principal judgment.

6. The applicant's son and the Government each filed comments on this matter.

7. On 4 September 2009 the applicant's son was invited to submit written evidence that the property at stake was still registered in his name or to indicate and substantiate any transfer of ownership which might have taken place.

8. In a letter of 24 September 2009, the applicant's representative stated that “no further changes of ownership of the ... propert[y] have taken place up to now”. In October 2009 he produced an affirmation of ownership of Turkish-occupied immovable property issued by the Department of Lands and Surveys of the Republic of Cyprus. According to this document, on 22 October 2009 the property concerned by the principal judgment was registered in the names of Nikolaides Nikolas, Nikolaides Michael and Nikolaides Andreas, each one of them owning 1/3 share of it. The applicant's representative stated that “late Loucas Nicola has before his death transferred his house and yard to his three sons, Andreas Nicolaides, Michael Nicolaides and Nicolas Nicolaides”. On 26 November 2009 the Court requested to indicate the date of this transfer of ownership. On 8 December 2009 the applicant's representative produced written evidence according to which the property concerned by the principal judgment had been transferred to the applicant's children on 12 January 1987.

9. On 26 April 2010 the Government informed the Court that they had learned that the applicant was not the owner of the property concerned by the principal judgment at the date of the introduction of the application. They accordingly requested revision of the principal judgment within the meaning of Rule 80 of the Rules of Court.

10. On 1 June 2010 the Court considered the request for revision and decided to give the applicant's representative and the Government of Cyprus, which had exercised their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1(b) of the Rules of Court), six weeks in which to submit any observations. The applicant's lawyer's observations were received on 7 July 2010. The Government of Cyprus did not submit any observations within the time-limit which was assigned to them (13 July 2010).

THE LAW

I. ADMISSIBILITY OF THE REQUEST FOR REVISION

11. The Government requested revision of the judgment of 27 January 2009, by reason that at the date of the introduction of the application the applicant was not the owner of the property concerned by the principal judgment, a house located in Trypimeni village (northern Cyprus), registered under registration number 5299, sheet/plan 13/40, plot no. 165 (see paragraph 10 of the principal judgment). According to the Government, this should deprive the applicant of “victim” status and should lead the Court to the conclusion that the application, based on misleading and/or knowingly untrue information, constituted an abuse of the right of petition (Article 35 § 3 of the Convention).

12. The applicant's representative noted that the Government's request for revision should have been presented within six months from the discovery of a decisive fact which was unknown to the Court. However, in the present case the fact that the applicant's son had become the administrator of his father's estate and had wished to pursue the application on behalf of the deceased was known by Turkey, at the latest, since the delivery of the judgment of 27 January 2009. The Government's request for revision should therefore be dismissed as being lodged out of time.

13. The Court should examine whether the Government's request for revision of the judgment of 27 January 2009 satisfies the conditions laid down by Rule 80 § 1 of the Rules of Court, which provides:

“A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court, within a period of six months after that party acquired knowledge of the fact, to revise that judgment.”

14. The Court first observes that in support of his claim to ownership, the applicant produced a copy of the original title deed, dated 3 February 1936. Moreover, in his application form of 31 May 1991, the applicant's representative stated that “the applicant has tried to return to his home and properties ... but has been prevented from doing so because of the Turkish military forces who have continuously occupied and use[d] his said home and properties contrary to the will of the applicant who is still the legal owner of same”.

15. The Court's finding of violations of Article 8 of the Convention and of Article 1 Protocol No. 1 was based on the assumption, corroborated by the applicant's representative's statements, that the applicant had been the owner of the house in Trypimeni until, at least, May 1991. However, after the adoption of the principal judgment, this assumption turned out to be incorrect. On 8 December 2009 the applicant's representative produced

written evidence according to which the property described in paragraph 11 above had been transferred to the applicant's children on 12 January 1987 (see paragraph 8 above).

16. This constitutes a fact which was unknown to the Court at the time of the adoption of the principal judgment and which the Government could not have known. Moreover, it might, by its nature, have a “decisive influence” within the meaning of Rule 80 § 1 of the Rules of Court.

17. As regards the applicant's representative's argument that his client's death and the wish of his son to pursue the application on behalf of the deceased were known by Turkey since 27 January 2009 (see paragraph 12 above), the Court observes that the fact which “might ... have a decisive influence” and “was unknown to the Court” when the principal judgment was delivered was not the applicant's demise and/or the intention of his son to continue the proceedings, but the fact that the applicant was not the owner of the house in Trypimeni after 12 January 1987 (see paragraphs 14-16 above). This fact was unknown to the Court and/or to the respondent Government until 8 December 2009, when the applicant's representative submitted written evidence of the transfer of ownership of the property concerned by the principal judgment (see paragraph 8 above). It follows that the Government's request for revision, introduced on 26 April 2010 (see paragraph 9 above), cannot be considered to have been lodged out of time.

18. It follows that the conditions laid down by Rule 80 § 1 of the Rules of Court are satisfied in the present case and that the Government's request for revision should be declared admissible.

II. MERITS OF THE REQUEST FOR REVISION

19. The Court reiterates that the starting point for its competence *ratione temporis* is the date of the deposit of Turkey's declaration recognising the right of individual petition under former Article 25 of the Convention (see *Cankocak v. Turkey*, nos. 25182/94 and 26956/95, § 26, 20 February 2001, and, *mutatis mutandis*, *Demades v. Turkey* (just satisfaction), no. 16219/90, § 21, 22 April 2008). In 1974 Turkey had not recognised the right of individual petition. It did so on 22 January 1987 and should be held accountable for any interference with the applicant's property rights which had occurred after that date. In the present case, however, the applicant transferred the ownership of his house to his three children on 12 January 1987, which is before the date of the deposit of Turkey's declaration.

20. It follows that Turkey has not interfered with the applicant's property rights at any point in time falling within the competence *ratione temporis* of the Court. This is sufficient to reach the conclusion that, at the time of the introduction of the application, the applicant could not claim to be a “victim”, within the meaning of Article 34 of the Convention, of a violation of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Stoicescu v. Romania* (revision), no. 31551/96, § 59, 21 September 2004).

21. As far as the applicant's complaint under Article 8 of the Convention is concerned, the Court recalls that the Grand Chamber has recently held that it is not enough for an applicant to claim that a particular place or property is a "home"; he or she must show that they enjoy concrete and persisting links with the property concerned. The nature of the ongoing or recent occupation of a particular property is usually the most significant element in the determination of the existence of a "home" in cases before this Court. However, where "home" is claimed in respect of property in which there has never been any, or hardly any, occupation by the applicant or where there has been no occupation for some considerable time, it may be that the links to that property are so tenuous as to cease to raise any, or any separate, issue under Article 8. Furthermore, while an applicant does not necessarily have to be the owner of the "home" for the purposes of Article 8, it may nonetheless be relevant in such cases of claims to "homes" from the past that he or she can make no claim to any legal rights of occupation or that such time has elapsed that there can be no realistic expectation of taking up, or resuming, occupation in the absence of such rights. Nor can the term "home" be interpreted as synonymous with the notion of "family roots", which is a vague and emotive concept (see *Demopoulos and Others, Chrysostomi, Lordos and Lordou Anastasiou, Kanari-Eliadou and Others, Sotirou and Moushoutta, Stylas, Charalambou Onofriou and Others and Chrisostomi v. Turkey* [GC] (Dec.), nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, § 135, 1 March 2010).

22. Turning to the facts of this case, the Court observes that the applicant ceased to live in the home in Trypimeni in 1974, which was more than twelve years before the Court's temporal jurisdiction commenced and more than fifteen years before the date of introduction of this application. For a considerable part of his life, he had been living elsewhere. Moreover, he decided to transfer his property rights over the house at issue to his children in January 1987, thus losing any legal link with his former place of residence before Turkey's recognition of the right of individual petition. The applicant died on 25 May 1992 and never inherited from his children. The Court accordingly does not find that the facts of the case are such as to disclose any interference with the applicant's right to respect for his home (see, *mutatis mutandis*, *Demopoulos and Others*, cited above, § 136).

23. It follows that the complaint under Article 8 of the Convention is manifestly ill-founded.

24. Moreover, the Court cannot but confirm its finding that it is not necessary to examine whether there has been a violation of Articles 1, 13 and 14 of the Convention (see paragraphs 40 and 43 of the principal judgment and point 5 of its operative provisions). It considers that having regard to the facts of the case, the submissions of the parties and its findings under Article 1 of Protocol No. 1 and Article 8 of the Convention, no further admissible issue arises for examination concerning the remaining

complaints made by the applicant (see, *mutatis mutandis*, *Demopoulos and Others*, cited above, § 143).

25. Finally, it is true that the Court has granted the applicant's son standing to continue the proceedings in his father's stead (see paragraphs 14-15 of the principal judgment and point 1 of its operative provisions); however, it is to be recalled that the applicant's son has not introduced an autonomous claim concerning a potential violation of the property rights which he had acquired from Mr Loukas Nicola, but has merely successfully requested to pursue the application lodged by the deceased (see, *mutatis mutandis*, *Sophia Andreou v. Turkey* (just satisfaction), no. 18360/91, § 33, 22 June 2010). Under these circumstances, no interference with a right guaranteed by the Convention or its Protocols can be found in the ambit of the present application with regard to Mr Andreas Luca Nicolaides or of any of the applicant's heirs.

26. It follows that the application is partly incompatible *ratione personae* with the provisions of the Convention and partly manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 (see, *mutatis mutandis*, *Stoicescu*, cited above, § 60).

27. This conclusion dispenses the Court from examining the Government's argument that the application constituted an abuse of the right of petition (see paragraph 11 above).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the Government's request for revision of the judgment of 27 January 2009;
 2. *Declares* inadmissible the application no. 18404/91 lodged by Mr Loukas Nicola;
- accordingly,
3. *Decides* to revise in its entirety the judgment of 27 January 2009.

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